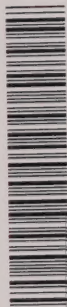


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SIXTEENTH REPORT

OF THE

DEPARTMENT OF ARCHIVES

FOR THE,

PROVINCE OF ONTARIO

BY

ALEXANDER FRASER, M.A., LL.D., Litt.D., F.S.A. Scot. (Edin.), etc.

1920

PRINTED BY ORDER OF  
THE LEGISLATIVE ASSEMBLY OF ONTARIO



TORONTO:

Printed and Published by CLARKSON W. JAMES, Printer to the King's Most Excellent Majesty  
1921

Printed by  
THE RYERSON PRESS.







*A. W. Smith*

SURVEYOR GENERAL OF UPPER CANADA 1792—1804.

*With compliments of*

*Alexander Fraser, M.A., LL.D., Litt.D.*

*Ontario Archivist*

*Toronto, Canada.*





LETTERS OF TRANSMISSION.

To His Honour LIONEL HERBERT CLARKE, Esq.,

*Lieutenant Governor of the Province of Ontario*

MAY IT PLEASE YOUR HONOUR:

I have pleasure in presenting herewith for the consideration of Your Honour the report of the Department of Archives for the Province of Ontario for the year 1920.

Respectfully submitted,

PETER SMITH.

*Treasurer of Ontario.*

Toronto, 1921.

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The Honourable PETER SMITH, Esq., M.P.P.,

*Treasurer of Ontario.*

SIR,—I have the honour to submit the following Report in connection with the Department of Archives for the Province of Ontario for the year 1920.

I have the honour to be, Sir,

Your obedient servant,

ALEXANDER FRASER,

*Provincial Archivist.*

Toronto, 31st December, 1920.





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## INTRODUCTION

"We have built on what they have wrought."—W. D. LIDTHALL.

The beginnings of political institutions and of stable government in Upper Canada necessarily came into existence only with the systematic settlement of the land; and, as a more or less definite knowledge of the details of that settlement is requisite to an adequate study of our history, this volume is designed to aid the increasingly large number of students whose patriotic love imbues them with a desire to learn more and more of Canada's pioneer life and people.

The history of the territory, now the Province of Ontario, ante-dates the first British settlement of its lands by a period of more than a century and a half. In the interval lie the romantic episodes around which tradition is already winding its spell; the journeys of Champlain and of his intrepid successors; the explorations of Nicolet, Chouart and Radisson: Albanel, Joliet and Marquette; LaSalle, Hennepin, Henri de Tonti and others; the sublime heroism of the Jesuit Missionaries; the adventures, enterprises, and vicissitudes of the fur traders, in which *coureur-du-bois* and primitive Indian became brothers of the wild; and the re-echoing of the Seven Years' War of the American revolution; forming a rich heritage of intertwining fact and fancy on the canvass of our far past. A knowledge of and an interest in those pre-settlement days ought to be constantly encouraged, for as W. S. Herrington so well expresses it in his "*Martyrs of New France*," with which every boy and girl in Canada ought to be familiar—"That the great mass of English-speaking Canadians are deplorably lacking in even a superficial knowledge of the history of their own country while under the French regime, cannot be successfully denied. . . . One would think that the history of Canada was still wrapped in mystery, or was quite barren of noteworthy personages. . . . There is no need to appeal to the histories of other lands for examples of romantic episodes, startling adventures, and superior types of manhood, so long as we have access to the records of the first settlers upon the banks of the St. Lawrence."

This passage is quoted both because of its aptness, and as an acknowledgement of the service to the history of our Province rendered, in many ways, by Mr. Herrington during the past twenty years.

The study presented in this volume involves a brief sketch of the political machinery by which the administration of public affairs was carried on, and of the organization of the Government. The author assumes the responsibility for the views he expresses. On debatable questions it will be found

that he is transparently fair-minded, and that he rarely enters into political controversy.

With the appearance of the immigrants from the revolted American Colonies regular settlement may be said to have begun in Upper Canada, bringing with it large economic and political problems, some of which remained unsolved and contentious until after the legislative union of 1840. The British Government dealt generously with the new-comers from the young Republic and the Imperial wishes were given effect to, whole-heartedly, by the zealous Haldimand. The lands granted as compensation for losses in the war were meted by no niggardly hand; the public domain was lavishly bestowed. Not only were the original settlers requited, but children then unborn became beneficiaries as time passed on, so that nearly sixty years after the close of the war claims still came in, adjustments and re-adjustments were demanded, and a commission appointed by His Excellency the Lieutenant-Governor, to investigate claims and alleged grievances, reported that: "From an attentive consideration of the present state of the claims of the U.E. Loyalists—the time that has elapsed since the issuing of the Royal Proclamation promising lands to that meritorious class of subjects—the exceeding difficulty, under the present system of equitably dealing with the descendants of the original settlers—the committee is induced to recommend the adoption of some plan calculated to bring to a close all granting or transferring of land to any claimants of the Royal Bounty to U.E. Loyalists. . . . The increasing population and number of persons in each district of names similar to those in the U.E. lists, it is to be feared, opened a door to much attempted deception."

This experience, however, was only what might have been expected in the nature of things, and its recurrence has not been unknown. The steps taken to purge the list, as well as the lists of names removed after investigation, suggest a field of research too important to be abandoned to the exploration of interested genealogists. More serious consequences to the development of the province than those referred to are noted in the text.

Constant trouble also arose over the free grants of land made to soldiers of the Imperial and militia forces for service within and outwith Canada. The policy governing military grants and their administration form an interesting subject in the history of Upper Canada which will repay careful perusal, but to which brief references only are possible in this volume.

A third subject seriously affecting Upper Canadian settlement is that commonly known as the Clergy Reserves. When, by the Treaty of Paris, the exercise of the Catholic religion was assured to the French Canadians of that faith the British Government was not unmindful of the religious needs which would arise with the growth of a Protestant population in the new and extensive province. By the Royal Instructions, dated the 7th of December, 1763, General Murray, the Governor-in-Chief, was directed to give all possible encouragement to the erecting of Protestant schools, to the allotting of lands for glebes, to the maintaining of Protestant ministers and school masters; and to use all suitable means by which the Protestant religion might be promoted and established. This was further confirmed by the Quebec Act of 1774, and

when conditions in Lower and Upper Canada called for the passage of the Constitutional Act in 1791, the thirty-sixth section of that Statute made provision for the maintenance of a "Protestant Clergy" by a permanent appropriation of land in the two divided provinces. Historically and practically this enactment chiefly affected Upper Canadian settlement and in the Upper Province became the storm centre of a long controversy. The Statute specifically mentions a Protestant Clergy, and it is not without a curious interest, in view of the various definitions given in recent years, to the term "protestant" in its application to religious denominations, to recall the dispute as to its meaning a century ago. The general opinion was that the word meant "simply the antithesis of Catholic," but Anglicans, with Bishop Strachan at their head, contended "that the words 'Protestant Clergy' in the Act of 1791 are used as contra-distinguishing the clergy of the Church of England from the Church of Rome and cannot be further extended." The claims of the Church of Scotland were, however, recognized, but agitation did not cease until long after the Act of 1854 was passed authorizing the secularization of the Reserves.

As to religious conditions towards the middle of last century Dr. Norman MacLeod of the Barony Church, Glasgow, on his return from Canada in 1845, gave this word picture of vacant parishes he had visited:

"If I could just form a proper picture of one of these churches, it would be more eloquent than ten thousand speeches about vacancies. Suppose that, after a long journey, you come to a house built in some green nook, singled out from the surrounding wilderness; the people gradually collect before the door, some from the neighbouring woods, some from the distant hamlets, and some have, from an early hour, been in their waggons trudging along through heavy swamps. They are all assembled, you enter, and at a single glance from the pulpit you are sensible that you are addressing fellow countrymen; the psalm is given out, you hear Bangor or old Dundee sung, you feel a thrill as each joins his homely voice to the plaintive measure, and then you think yourself in a Highland glen. You preach, you rebuke, you exhort, you admonish, you comfort, and then quickly comes the hour that you must part, the time when is heard the solemn amen; and the thought strikes you that the church door will not be opened again for many a Sabbath—that the autumn leaves may fall and rustle at its threshold—that the snow of winter may wreath itself there—but no passing foot will clear it away. When you see that, oh, it is then that you fully know what a vacancy is." \*

To the historian one ounce of real life is worth more than a pound of legislation. Pioneer life in Upper Canada was strenuous but, as a rule, the necessary hardships were borne with courage and the hopeful prospects yielded no small measure of light-hearted happiness. If the useful axe happened to have a blunt edge the arm which wielded it was usually strong. If the cooking utensils were sometimes primitive a keen appetite gave relish to the homely fare. The incessant hard labour of the day was relieved from monotony by neigh-

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\* Report of the proceedings of a public meeting held at Edinburgh, 10th November, 1845.



bourly intercourse; the simple conditions of life induced a friendly spirit; while the spur of necessity urged ambition on, and fostered sturdy self-reliance which stamped itself permanently on the character of the people. Letters written to friends and relatives who remained behind in the homeland often reveal, in their unvarnished, unconscious simplicity, as no other historical documents can, the remarkable task those forefathers undertook to perform when they first reared their log huts in the all but impenetrable forests of Upper Canada. The span of time since then is brief, but the transformation is complete, requiring exercise of the imagination to comprehend and an uncommon capacity to visualize the past in order to understand and appreciate. Fortunately personal correspondence of this character has been preserved and it is possible to draw a fairly complete picture of the social life of those receding wilderness days. From one of such letters a few passages are selected. It was written by Robert Fisher in 1832, to his parents in the old land. After describing the ravages of the cholera then epidemic in Upper Canada he says:

"Through all the different townships I passed in my way up the country, I give the preference to Guelph; the climate appears to be more like that at home: it is peopled with our own country people principally, and what few Irish are here, are selling off their farms and moving further up the country. This township is very healthy and well supplied with springs in almost all parts of it. The old settlers inform us they experienced no sickness until the emigrants came up this season. Here is a comfortable little village, nearly as large as Laxfield Street; more respectable society than in it or its neighbourhood; more inhabitants and more public inns, two of which are conducted in quite as fashionable a style as any in Halesworth, and about four times the business carrying on in almost every line. A very fine water-mill, which drives three run of stones; and this place was five years since inhabited by bears and wolves. All business goes on with a great degree of spirit, as property increases in value more and more every day. There have been four new houses erected since I have been here; it seems almost incredible excepting to those who have seen new townships arise as fast as they do. The Guelph mill I am superintending belongs to the Canada Company.

. . . The wages for the man who helps me is 24 dollars per month, which is £6 currency. . . . I have every reason to believe my own wages will soon be raised to at least £100 a year, for the Company's agent is well satisfied with my method of conducting business. . . . Our way of doing business is, for all the grist we grind, which is about 150 coombs per week (and all is brought to the mill by the owners, many of whom come from twelve to fifteen miles), we take every twelfth which amounts to about twelve bushels. All the flour we have time to make sells by retail very readily for money at 3 dollars per cwt.; bran, 5 York shillings per cwt. which is 3s. 1½d. currency; and our middlings 10s. York, which is 6s. 3d. currency; for grinding grist we earn from £10 to £12 a week. The Company had offered the mill for sale, but since I have been here she has answered their purpose so well they have declined selling her. . . . Pray keep Anthony to the milling business, and get him as forward as you possibly can, for by that in this country he may do well.

"I have made every possible enquiry respecting farming, which I have the most convenient opportunity of doing; as I before stated, we grind for the settlers from ten to fifteen miles in every direction: many of them have told me, when they reached this country, they had not a cent to help themselves; for the first year or two they were very much tired—I mean those who took up land for themselves—they endured many hardships, more than many of your paupers ever did, for how should it be otherwise. To maintain their families they had to work for other people, which they did as little as they possibly could, but in two years they had surmounted all their difficulties, and by their gradual increase of produce, in a few years became totally independent; but the man who brings with him a few pounds avoids all these difficulties; this is not information of one man only but of nine-tenths of them. . . . I was no longer ago than yesterday talking with a farmer who came to this country only one year since; he has some property; he chopped twenty acres, planted twelve with wheat, which he sold at one dollar per bushel; this he admitted paid him for the land, the chopping of it, and all other expenses, and then he had money to spare. . . . Barley here sells at half a dollar per bushel, rye 3s., oats 2s., wheat 5s., Indian corn 2s. 6d., peas 2s. 6d., butter 10s. per lb., cheese of the commonest kind 12d. per lb. In this country you may do well; I shall advise you by all means to come out next spring, as the prospects for you here are ten to one above what they are in the old country. . . . If you come out bring as little luggage as possible, as you will find the money more useful: bring at least four bushels of the best barley, as we have but little here that is good; also three or four sacks of good grass seed, all your cooking utensils, a little shoe leather and a good stock of flannels and clothes as they are much superior quality to those you get here and much cheaper."

All letters to Old Country friends were, however, not so truthful as this one; sometimes hopes were held out that could not possibly be realized. Others indulged in exaggeration for the fun of it.\*

The enterprise of the farmers who located in the vicinity of Guelph is further illustrated by the account of the first importation of live stock brought from Britain. Rowland Wingfield chartered a vessel and crossing the Atlantic "sailed up the St. Lawrence, ascended the Ottawa, came down the Rideau Canal, landed

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\* For instance, in Caradoc the ready scribe of the community was Duncan Blue, a practical joker and a pawky wag. Once when sending over the news of the township to friends in Islay, he drew the long bow and awaited results. "John Gilchrist," he said, "is getting on better than any of us. You should see his clearing. I went to see him last week, and there was John, as busy as a bee, with more than a hundred niggers working for him on the big logs." Mails did not go or come often in those days, but the news of Gilchrist's success became the talk of the parish, and very soon he was the recipient of suggestive congratulations from needy relatives whose expectations had been aroused. The explanation that in the process of clearing the bush a "nigger" did not mean a "negro" but an improvised device used as a support in burning heavy logs, did not seem plausible at home and the opinion that Gilchrist was an affluent but close-fisted relative, held the field for many a day.

Occasionally wonderful stories of hair-breadth escapes from bears, wolves and Indians embellished the correspondence, and furnished the staple supply for entertainment when neighbours gathered around the old hearthstone, on the winter evenings. Less than a hundred years ago echoes of the Iroquoian cruelties lingered among the cottages of many a countryside—fragments of exaggerated tales by early travellers—and the peaceable, docile character given to the friendly Indian by the pioneers was not always accepted at its face value. On the contrary, it was believed to be a ruse for emigration purposes, in the interest of the settlers themselves.

his stock at Hamilton, and then drove them on foot to his farm in Wellington County.\* The following quotation is from an interesting paper by the late Dr. C. C. James:

"It is but a few years since the farmer lived in a log house built by his own hands and but rudely furnished. The heating and cooking were done at the big open fire place. The food of his table was entirely of his own raising and was therefore limited in its variety. For many years his clothes were of deerskin or of home spun, his winter's cap was of the same material, his summer hat was of straw plaited by his own family. His logging and hauling were done by oxen. He cut the grain with sickle, scythe or cradle, and his wife and children followed with rakes, binding and shocking the grain. He threshed on the barn floor with the cumbersome flail or by the tramping of his horse's feet, and he winnowed after the manner of by-gone centuries. He flung it over his own sturdy shoulder and strode off by the trail to the little mill miles away where by water power it was ground into flour between stones. The social life of the community was largely maintained in the old-fashioned "bees" when the neighbours gathered for a logging or clearing, a barn raising, a road making, a corn-shocking or even a pig-killing. The women had their bees for carpet-making or quilting. Traces of these old customs are still to be seen in the well worn rag carpet of some old farm house or the log cabin quilt that still appears at the country fairs. Many of our grandfathers and grandmothers made love to one another at an apple-paring bee when the young men pared the fruit and the young women quartered, cored and strung them on strings to hang up on the cross beams to dry for winter's use. The school teacher, generally a full-grown man who had seen service in the old land, "boarded round" and was eagerly looked for in many homes. The cobbler or shoemaker went from house to house with his tools and roll of leather staying at the house till the whole family were rebooted or reshod. The peripatetic tailor dropped in from time to time to make up a suit or two for Sunday wear. The clock-maker came on his rounds and cleaned up the old clock, the grandfather's clock, that stood in the corner of the living room and started it aright, though the older members of the family never forgot to make their reckoning by the sun. From time to time the dusty pedlar turned in and laid down his capacious pack, and became for the time being the most important personage in the world to the younger members of the family."

The country gradually developed, and settlers were attracted by the good reports sent back to friends looking for an opportunity to improve their condition of life. From about 10,000 settlers in 1784, the number had increased in 1829 to about 210,000, and in 1840 to 432,159.

At an early stage farmers combined to form Agricultural Societies. One was organized at Newark in 1792 or 1793. A few were in existence in 1825; and in 1830, the Legislature passed an Act giving practical assistance in the form of money grants to such societies. Encouraged thus the numbers quickly increased, and their good influence was soon felt. Live-stock and farm implements improved and the cultivation of the soil received better attention.

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\* Ont. Bur. Ind. 1897, p. 27.



When the first immigrants arrived they could only bring with them from their farms in the United States very few conveniences for either home or farm and consequently necessary supplies were furnished by the Imperial Government. Among these was the old English plow, consisting of a small piece of iron fixed to the colter shaped like the letter L, the shank of which went through the wooden beam, the foot forming the point, which was sharpened for use. One handle and a plank split from a curved piece of timber, which did the duty of a mold board, completed the rude implement. At that time the traces and leading lines were made of the bark of the elm or basswood, which was manufactured into a strong rope." In 1805 the "hog plow" was imported from the United States. One of the first improved plows to be manufactured in the province (1815) was one with a cast-iron share and mold-board in one piece. Eighteen years later the president of the Frontenac Cattle Show drew attention to the need of further improvement and evidently with the demand the supply did not fail to come. The development was steady and satisfactory: thus, Canada is found holding her own in 1855 at the Paris Exhibition. The description is interesting:

"The plowing tests were brought to a close by a trial of two plows equally remarkable—to wit, the plow of Ranson & Simms of Suffolk, England, and that of Bingham, of Norwich, Upper Canada. The first is of wood and iron, like all the English plows, and the results which it produced most satisfactory, but it seemed to require a little more draught than the Howard plow. Bingham's plow very much resembles the English plow; it is very fine and light in its build; the handles are longer than ordinary, which makes the plough more easy to manage. The opinion of the French laborers and workmen who were there, appeared on the whole very favourable to this plow."\*

It is important to note the different races that enter into the warp and woof of Ontario citizenship. Contrary to general opinion, the American immigrants who came to Upper Canada at the close of the Revolutionary war, were not, as a whole or even mostly, of British stock, bringing with them and glorying in British traditions, and as has been long supposed, founding time-honoured British institutions in the forest clearings of Canada. This fact does not by any means detract from the genuineness of their professions of loyalty to the Crown which were well tested and beyond doubt, while on the other hand, it helps to explain the undercurrent of British policy on their behalf.

The Loyalists traced their origin back to various European countries. The families, for example, which were spread over the district skirting the Bay of Quinte were mostly of Dutch and German origin, inheriting social and political opinions from the peasantry and burghers of the Netherlands and it is believed from the middle class of Saxony; the point of view of Von Tromp and Luther, rather than that of Blake and Cranmer.

From the Mohawk Valley came the German Palatinates who did not forget Britain's hospitality in the days when persecution had rendered them destitute.\*

There was a strong infusion of disbanded Hessian troops, cradled in autocracy, and handed over to the Hanoverian George by the Landgrave of Hesse†

\* Journal d'Agriculture Pratique.

† Hist. Ont., Fraser, 1907, Vol. I, 173.

much per soldier. Their fealty while they fought was to their own ruler, their service to their foreign paymaster, who later became their liege lord.

There was also a strong sprinkling of French Huguenots who had suffered for conscience sake in their fatherland and had found refuge in New England after a recuperating sojourn in Great Britain and Ireland.

The English element were chiefly descendants of Puritans more or less touched by Cromwellian republicanism.\*

The Scottish Highlanders who settled in Glengarry were comparatively speaking few in number. They were mostly from the Mohawk Valley and had fought in one or other of Sir John Johnson's corps.†

This, out of a total computed at 10,000 souls—men, women and children, constituted what is known as the first Loyalist settlement of Upper Canada. The majority of them crossed over from the adjoining State of New York; from the south side to the north side of the great route to the sea. Being the first to arrive they had the advantage of the convenient waterfront and escaped some of the initial hardships of the lonely, isolated backwoodsman.

Having regard to the composite character of these first settlers, the absence of homogeneity, their inherited partialities, the comparatively small number of British among them, and the contrast between their previous colonial life and their new surroundings, the British Government cannot reasonably be criticised for doubting the permanency of their settlement, for a tendency to believe that their hearts were still more or less with their republican relatives in the revolted States, and that when time had healed their wounded feelings, the invisible boundary line would be recrossed. It is a curious commentary on subsequent events that this unfounded distrust led to a system of secret espionage, the paid agents of the

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\* United Kingdom, Goldwin Smith, Vol. II, p. 203.

† The story of the emigration from Glengarry, Scotland, to the Mohawk valley, is no less interesting than the romantic story of the Fencibles, led to Canada thirty years later, by the indomitable Father Alexander Macdonell (Bishop Macdonell.) In both cases the people were evicted from ancestral homes which they had regarded as perpetually their own. The Gaelic Bard, reflecting on the long, long ago, sang with sad indignation:

When the bold kindred, in the time long vanished,  
Conquered the soil and fortified the keep,  
No seer foretold the children should be banished  
That a degenerate lord might boast his sheep.  
Come foreign raid! let discord burst in slaughter,  
Oh, then, for clansman true, and keen claymore,  
The hearts that would have given their blood like water,  
Beat heavily beyond the Atlantic's roar.  
Fair these broad meads—those hoary woods are grand,  
But we are exiles from our fathers' land.

Those Scottish mountaineers were evicted from homes of comfort, if not of luxury; the homes of happiness, refinement, and hospitality; of moral and religious principles, and a patriotic sentiment, born of strong attachment to the soil. United States writers have repeatedly caricatured them as wild caterans distasteful to the peaceful Germans of the Mohawk Valley. The Highlanders were Catholics, devout and genuine, as much attached to their priests as Lutherans to their pastors; but the imputed savagery was born of the imagination of vivid Americanism. It was as far from the real truth as east is from the west. In short the Highlanders had been in comfortable circumstances in their native land, and no inducement the American colonies could offer would have led them to leave their homes. They were not freeholders and when deprived of their farms to make room for sheep, many of them were ruined and found it necessary to begin colonial life under all the disadvantages of pioneer days.—Hist. of Ont., Fraser, 1907, Vol. I. pp. 178-9.

British Government being chiefly German artizans and disbanded soldiers of foreign origin. Intervening generations have belied British fears; but, it is one thing to glance backwards over the course of events and quite another thing to forecast the probabilities of an uncertain future. Yet, again, it was not unnatural that the reform movement countenanced by such men as Baldwin, Hincks, and others with them, who had a long lineage of undisputed loyalty behind them, should instinctively awaken a friendly and readier response in the hearts of their kith and kin in the British Isles, who also were then feeling the throb of public freedom, than was possible earlier in the century.

The Loyalists left behind them relatives and friends who had fought with the revolutionists, and had accepted the republican form of Government. Communication between the two countries was not interrupted and before long old neighbours followed to enjoy in Canada free lands which, when cleared, were more fertile and better situated than those they voluntarily gave up in making the change; and broken friendships were renewed. The second and third wave of immigration, thus stimulated, swelled the number already on the original list and immensely strengthened the infant settlements.

About a decade later Simcoe encouraged, successfully, but with less care, immigration from the United States and slowly but steadily the population grew. An important addition was made by the arrival of the disbanded Glengarry Fencibles who joined their compatriots in the county of Glengarry, who had before the war settled on the Mohawk. After the war of 1812-11 the backwoods were opened and immigration from Ireland and the British Isles went on apace. Success followed success and, as obstacles to advancement gradually disappeared, prosperity and its attendant comfort and contentment spread over the land. The proud position occupied by Ontario to-day has been fairly won. The forefathers won their battles with nature and their conflicts with man by courage, a patient perseverance, and a faith that never wavered; and their story has much in it to inspire their descendants with unflinching confidence in their country's future.

This study of the land settlement of Upper Canada by Mr. Patterson, was begun while he was a student in the University of Toronto, as a thesis leading to the degree of Master of Arts. In its preparation he made large use of the material in the Ontario Public Archives, Toronto;—the Government which since 1792 has been responsible for Crown grants—of the MSS. Collection in the Toronto Public Library; and especially of the Upper Canada papers in the Public Archives, Ottawa.

ALEXANDER FRASER,

*Ontario Archivist.*





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LAND SETTLEMENT  
IN  
UPPER CANADA  
1783 - 1840

GILBERT

By

C. PATTERSON, M.A.

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(Onts)



## CHAPTER I.

### HISTORICAL SKETCH—CONSTITUTIONAL.

Ten years after the British conquest of Canada, the limits of the Province of Quebec were extended to include all that territory west of Acadia to which the French had laid claim, as far as the Mississippi and the Ohio. The population was small, for settlement extended scarcely beyond the Lower St. Lawrence Valley. Of the district between Lakes Huron and Ontario little was known. To reach it necessitated an expensive, toilsome, and often dangerous journey.

By 1776 British settlers had begun to filter slowly into this district. Following the American War of Independence their numbers were swelled by the migration of the Loyalists, seeking new homes under the old flag. It is estimated that some ten thousand of the latter had settled in the country west of the Ottawa by 1784. Already versed in the experiences of frontier life, they were to constitute a powerful factor in its later development.

The government of the province, as defined by the Quebec Act, was regarded with disfavour by the new arrivals. All legislative and executive power was in the hands of a Governor and Council. The administration of the law was unfamiliar; British criminal law, indeed, prevailed; but in civil cases the French system had been retained. To Loyalists who were promised lands as compensation for upholding the authority of the British Crown, a French land tenure was especially objectionable. The Canada Act of 1791 was an attempt to introduce more representative institutions and to modify the anomaly of foreign laws in a British colony.

Under this Act the former Province of Quebec was divided into two provinces, known respectively as Upper and Lower Canada. Upper Canada embodied the area west of the Ottawa, excepting the seigniories of Longueuil and Vaudreuil, situated at the junction of that river with the St. Lawrence. A Governor General appointed from London represented the Crown in military and foreign affairs for all the British provinces in North America. To each province was assigned an executive head in the person of a Lieutenant Governor. Upper and Lower Canada each had a Legislative Council and a Legislative Assembly. The Council members were nominated by the Crown, and held office for life; the Assembly was elective. Appointments to the Council were made through the Governor or the Lieutenant Governor, a minimum of seven "discreet and proper persons" being specified for Upper Canada, and fifteen for the lower province. Hereditary titles of honour might be bestowed upon these chosen ones, at the pleasure of His Majesty's Government. In preparation for the election of members for an Assembly, the Governor or Lieutenant Governor in each province was authorized to create "districts, or circles, and towns and townships," and to declare the number of representatives to be chosen by each. Franchise qualifications were set at forty-shilling freeholds in the districts or counties, and five-pound houses and



lots in the towns; if resident one year in a town, a ten-pound rental would qualify. The Assemblies were to continue for four years after election unless prorogued or dissolved beforehand by the Governor or Lieutenant Governor. Both Council and Assembly were required to meet at least once in each year.

The legislative powers of this Parliament were subject to certain restrictions. Bills originating in the Assembly might be rejected by the Council, that body supposedly being less responsive to popular clamour. Should both concur in passing a measure, it was still necessary to secure the assent of the representative of the Crown. Upon occasion, a bill might be reserved by him for decision by the Home Government. Copies of all bills to which he assented were to be transmitted to the Home Government, by whom they might be disallowed within two years from the date of receipt.

The Governor or Lieutenant Governor in each province was empowered to appoint members to an Executive Council as an aid in administering provincial affairs. The Lieutenant Governor in Council might constitute a provincial Court of Appeal in civil cases. With the advice of the Executive Council, he might appropriate lands for the support of a Protestant clergy within the province, erect and endow parsonages, and present an incumbent to each. These provisions of the Act were subject to variation or repeal by the Provincial Parliament, on condition of approval by the Home Government. Freedom of religion, as then understood, was stipulated. There were certain provisions with respect to lands in general which will be discussed later.

Some description of the practical workings of this system of government should precede any discussion of political activities. A cause of intermittent friction lay in the badly-defined relationship of the Lieutenant Governor to his nominal chief, the Governor General. Lord Dorchester held the latter position during the first years of Upper Canadian history. He assumed that his authority extended to all matters, civil or military, whether of general or provincial interest. Hence he wished to be considered the principal channel of communication with the Home Government. But Lieutenant Governor Simcoe of Upper Canada considered himself vested with complete jurisdiction in civil matters within his own province, and the Home Government set a precedent by communicating directly with him. Disputes resulted, both parties appealed to Britain for a ruling, and Simcoe's position was sustained. A similar ruling, given in 1820, when the old argument arose between Governor General Dalhousie and Lieutenant Governor Maitland, sets forth in more precise terms the attitude of the Home Government, and may be quoted in this connection. With the exception of military affairs, in which the Governor General's authority was absolute, the rule was to be universal. " . . . so long as the Governor in Chief is not resident within the province of Upper Canada and does not take the oaths of office in Upper Canada, he has no control whatever over any part of the civil administration, nor are you bound to comply with his directions, or to communicate with him on any act of your civil government. To His Majesty you are alone responsible for the conduct of the civil administration, nor can you be relieved of this responsibility otherwise than by the residence of the Governor in Chief within the province, and by his there taking the oaths

and assuming to himself the administration, of which it will be his duty to give you notice. In such case your functions of Lieutenant Governor will be altogether suspended."<sup>1</sup>

Under an arrangement of this nature there could be little interprovincial effort to co-ordinate political development. What effort there was toward such an end originated in London, and varied with the views of successive Secretaries of State on colonial policy. During the period under study widely divergent views were held. From the time of the American Revolution to about the year 1831 little interest was taken in colonies. In general they were regarded as wild, waste places, and the loss of the American colonies, by far the most important commercially to Britain, naturally only increased the tendency to neglect the development of others. The American experience put an end to efficiency of administration. Governors were no longer selected because of confidence in their administrative ability; instead, they were sent out under general instructions which were constantly being supplemented from the Colonial Office. Inevitably there came the tendency to shift all possible responsibility to the shoulders of the Colonial Secretary. Later came the Manchester School of Free Traders, doubting the wisdom of maintaining any relations between colonies and mother country. This general attitude was based on a belief that in course of time all colonies would become free countries.

In 1784 the old Plantations Board gave way to a Committee of Privy Council for Trade and Plantations, which transacted all business connected with the colonies. Ten years later, the Secretary for War became also Secretary for the Colonies. In 1801 the two departments were united. There were frequent changes in the office of Secretary for the Colonies, and the real power tended more and more to attach itself to the office of Under Secretary, whose occupant was more permanent. Practically all decisions were made by the Secretary, attention being given to both official and popular expressions of opinion on the matters under consideration. In the case of a province such as Upper Canada, possessing a representative Assembly, provincial legislation was of importance and received special treatment. Acts of Assembly, upon receipt by the Colonial Secretary, were transmitted to the Lord President of the Privy Council to be laid before His Majesty in Council. They were then referred to the Committee for Trade and Plantations, on whose report depended their confirmation or disallowance by His Majesty in Council. The final decision was transmitted to the Lieutenant Governor by the Colonial Secretary. The Secretary usually was present to assist in the deliberations of the Trade and Plantations Committee, or if unable to attend in person, he would transmit to the President a written minute explanatory of his views. In either case it was understood that his name should appear on the minutes as having part in the advice given to His Majesty in Council. In so far as the Acts to be confirmed or disallowed were directly related to the internal economy and government of the colony, the Secretary was considered as taking a principal share in the responsibility for the decision.

In cases where Acts of Assembly had a direct bearing on other than provincial interests, the procedure differed slightly. Perhaps a particular

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<sup>1</sup>Q 328, Part II, page 185. Maitland to Bathurst, Dec. 15, 1820. Can. Arch.  
Q 337A, page 8. Bathurst to Maitland, Feb. 9, 1821. Can. Arch.

Act might affect the external trade or the military defence of all Canada. The custom then was either to summon or consult by letter such of the members of the Committee as were more intimately connected, by reason of their official stations, with the interests so affected. As the Committee included in its membership the heads of all great departments of state, it was able to make reports on matters connected with the proper business of several distinct departments without encroaching on the peculiar functions of any. Money questions usually were referred to the Lords of the Treasury, who in due course issued instructions to the Colonial Secretary. On nice points of law the law officers of the Crown were consulted, while matters of military consequence were submitted to the Board of Ordnance. Minor decisions, given by the Colonial Secretary alone, were rested technically on His Majesty.

This policy of directing from London all the concerns of a Canadian province necessarily was unsatisfactory. There was not yet the ease and quickness of communication which might have obviated certain of its more patent disadvantages. Despatches from Britain, by way of either Quebec or Halifax, frequently were four to seven months in passage, and, by way of New York, at least two months. In the absence of precise instructions covering some unexpected situation, the Lieutenant Governor would have to act on his own judgment, and in due course his action might be disallowed, or at least disapproved, by the Home Government. Again, the lack of any well-defined system of municipal government within the province resulted in the transference to London of trivial as well as important business. Thus on the fourteenth day of March, 1827, in the course of state business, the Privy Council, headed by His Majesty, solemnly considered the allowing of an Act "to make further and more effectual provision for the prevention of accidents by fire in the several police towns of the province," and of another "to impose a tax upon dogs in certain towns in this province."<sup>1</sup>

After 1831 came a change in colonial policy. Distress had come after the Napoleonic wars, and the evils of the tremendous industrial development which later ensued forced a consideration of long-existing social problems. One wing of the Radical party believed in migration to the colonies as a remedy for the misery which prevailed. In 1826-7 a committee of the House of Commons had recommended a system of emigration controlled by local authorities. Huskisson, when Colonial Secretary, had intended to establish in London a land board for the management of colonial Crown lands. Gibbon Wakefield was a leader of this school of thought. He was opposed to convict settlement, and advocated encouragement of the best possible class of emigrant. He foresaw a possible demand on the part of such colonies for free local institutions, lessening imperial control, but when the demand actually came he did not anticipate, as its necessary sequel, separation from the motherland, as did the Manchester School. He and his associates advocated responsible government for the colonies; mutual interdependence of Cabinet and Assembly, roughly as now existing in Canada. It was not yet clear, however, that the King should not be in actual control. A state of balance between King, Lords and Commons was considered the desirable thing. The effect of these

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<sup>1</sup>Q 371A, page 177. Can. Arch.



doctrines on colonial policy in general and the land system of Upper Canada in particular will be discussed later.

Within the province itself, much depended on the personality of the Lieutenant Governor. Through him the Home Government expressed its attitude on state matters, and obtained much of its knowledge of the progress of events. It was a serious matter for the Government publicly to veto a decision rendered by its special representative in the province, and hence it rarely was done, unless he had violated directly the spirit of his instructions. In extreme instances he might be recalled. But, in the meantime, much mischief could be done by a man of rash judgment. The appointment was a matter of patronage, and usually reflected the character of the party in power in Britain. The custom prevailed of selecting army officers for the post, lest trouble arise with the United States or the Indians. Political experience was a minor consideration. As a rule the appointees were men who felt the responsibility of the office, and followed in the discharge of its duties their inbred sense of *noblesse oblige*. Their perception of democratic movement was slight, and as the province developed, its problems in that respect passed beyond their ability either to grasp or to solve.

Because a detailed knowledge of the provincial administration was impossible to a newly-appointed governor, the Executive Council came to acquire an unexpected importance. Nominally it was composed of those men of affairs in the province best fitted to advise him. Its duties were not solely advisory; the practical administration of affairs was left almost wholly within its jurisdiction. Ordinarily the Governor gave decisions on all questions requiring executive action, but the details of their performance were left to the Council. There was no division into departments, no individual responsibility, and no proper supervision. Its proceedings were secret, thus adding to its irresponsibility. Because of the superior knowledge of provincial affairs possessed by its members, the Governor naturally inclined to their viewpoint. Hence, although in Council his was the dominating figure, the influence of the Council increased in direct proportion to the growing complexity of Upper Canadian affairs through a series of gubernatorial appointments.

This oligarchic body was a most unsuitable instrument to set up against an elective Assembly in a new province. It was in line, however, with the colonial experience of the time. In Australia no one would advise control of the administration by a popular Assembly whose members might be convicts. In South Africa there was distrust of the Dutch. In Upper Canada there came grave suspicion of all "Americans" and "Republicans." The number of Council members varied, but usually only four or five would be in attendance at the meetings. The Chief Justice of the province customarily was a member, and his opinion on points of law would be of value. After a time it was usual to include an officer of the Lands Department of the Administration, either the Surveyor-General or the Commissioner of Crown Lands. But whether the questions in point were legal, financial, or otherwise, decisions were rendered by the Council as a body.

The course of procedure was fairly uniform. All motives for action came first to the Governor, whether in the form of instructions, petitions, reports, bills, or what not. These were transmitted, with or without com-



ment, to the Council, who duly returned a set of opinions as to the sort of action advisable. Usually these opinions were approved, and thereafter promulgated as Orders-in-Council. In the event of serious disagreement, reference was had to the Colonial Secretary. The Council followed much the same policy as the Privy Council in arriving at decisions; advice was sought from any of the provincial officers within whose jurisdiction the question lay. Upon occasion, officers administering the affairs of another province might be consulted. If properly drawn upon, these manifold sources of information should yield all the knowledge required for proper guidance.

The Legislative Council constituted the Upper House of the Provincial Legislature. In addition to its right to initiate legislation, it had authority to pass upon all bills voted by the Assembly, and its veto was final. In the early days of the province, men of the type required for the Executive and Legislative Councils were not easily found, and hence not a few were appointed to both bodies at once. In later years, when population had increased considerably, this overlapping became a cause of political discontent. As for the titles of honour attaching to the post of Legislative Councillor, the Home Government fortunately possessed sufficient sense of humour to refrain from giving effect to a provision which, in the existing circumstances, could have been only ridiculous.

The Legislative Assembly, the only representative part of the governmental machine, varied in numbers from sixteen in 1791 to eighty-one in 1841. Its powers were very limited, and of a legislative character only. At each opening of a new parliament the Governor delivered a set speech, in which various matters requiring legislation were enumerated, and the attitude of the Home Government set forth. Usually this speech was first submitted to the Executive Council for their opinion on the policies it suggested. After delivery it was transmitted to the Colonial Secretary. Thus motivated, a number of bills along the desired lines might be prepared and voted upon. There was no compulsion in the matter, however, and it was not unusual for the Assembly either tacitly to refuse to legislate in the manner indicated, or to frame bills not at all to the liking of the provincial and home authorities. Bills along other lines, and private bills, constituted the balance of the business at each session.

Until 1830 the power of the Assembly in money matters was almost negligible. It could vote money, but could not spend it. The Quebec Revenue Act of 1774 had made provision for the levying of a customs tax on all rum, brandy or other spirits, wine, syrup and molasses imported into the Province of Quebec, and also for the levying of license fees upon retailers of liquors. The money so derived was to be applied to the civil government of the province. When the Canada Act divided Quebec into two provinces, one of which has no seaboard, a new arrangement became necessary. Hence a clause in the Act provided that Upper Canada have a share of the duties and fees, and for many years these formed the bulk of the provincial revenue. In course of time, increase in population caused a rise in land values, and the fund derived from the sale and rental of Crown lands came to occupy an important place as a source of revenue. But as the Crown retained full control of all casual and territorial revenue, and itself maintained the civil list, the Assembly was powerless. In 1830, however, the Home Government relinquished its control of

the customs and license dues, in turn asking the Assembly to provide for the civil list, a request which was promptly granted. But the power thus gained was not decisive; if the Assembly stopped the supplies, the subsidies paid into the military chest from Britain, together with the provincial revenue not under Assembly control, would suffice to carry on the Administration. A factor of importance in determining the attitude of the Home Government toward many provincial problems was its unwillingness to expend more than the absolutely necessary minimum of money. Consequently much of the useful expenditure voted by the Assembly was turned down, and land schemes of various sorts constantly were being put forward as a means of creating sufficient revenue within the province.

Yet the influence of the Assembly was considerable. In the very early days of settlement, men's minds were occupied principally in the creation of homes; the politically-minded were few. Measures for opening up the land took precedence at the sessions of Parliament. But when a considerable population had collected, political activity increased. The Loyalists, who formed a large proportion of the settled population, had been accustomed to local institutions of government, and they demanded similar privileges in Upper Canada. The country was new, nearly every man owned his own land, and democratic tendencies were in the very air. Apart from the lack of a definitive system of municipal government, the difficulty lay in the existence of an executive authority not responsible for its actions to the people's representatives. Endless complaint from those outside the administrative circle resulted. The public attention naturally centred on real or fancied grievances; in the beginning but few of the popular leaders discerned the real problems of the situation. Yet in the very discussion of grievances came added knowledge of their causes. The logical clearing-house for political ideas was the Assembly, and in course of time it became a storm-centre in the conflict between a conservative administration and the exponents of provincial autonomy.

The Home Government, in the person of the Colonial Secretary, could not remain in ignorance of the quarrel. The Assembly was viewed as expressing through its minority, no less than its majority, certain views of a large section of the population, and due consideration was given its sentiments. In this connection the man in the Colonial Office possessed, in his remoteness from the seat of action, a distinct advantage. His part it was to deal with principles rather than instances, and his experience extended to many provinces, under the most diverse conditions of settlement and organization. Presumably he was above the petty contentions of the man-on-the-spot, and viewed policies in their wider application. The Lieutenant Governor, on the contrary, was influenced by personalities and happenings; surrounded by members of the governing class, he not unnaturally came to look at matters much from their point of view. Hence arose occasions upon which Governor and Secretary differed in opinion on provincial matters, and it is interesting to note that more liberal and far-sighted decisions, on the whole, emanated from the Colonial Office than from the office of the Lieutenant Governor and Executive Council.

The provincial system of justice centred in the Quarter Sessions. Justices of the Peace, after the English style, were appointed in each district. Lieutenant Governor Simcoe at first appointed Lieutenants of

Counties, also in the English style, and these officers appointed the Justices. In 1807, the appointment of Lieutenants was disapproved by the Home Government, and thereafter the appointment of Justices reverted directly to the Governor. The extent of the services, in a pioneer community, of these officials is well exemplified by their duties in connection with the Crown lands. Indeed, local magistrates and the members of local land boards constituted the germ of municipal administration in Upper Canada.

#### HISTORICAL SKETCH—POLITICAL.

The system of government here outlined was formally inaugurated in 1792 by Colonel John Graves Simcoe, first Lieutenant Governor of Upper Canada. Accompanied by his young secretary, a person destined to play an unique part in the history of the Crown lands, he landed at Kingston on the first day of July, and there took the oaths of office. Simcoe had served through the Revolutionary War, in due course being placed in command of the Queen's Rangers. A reason for the selection of a military man lay in the existing relations between Britain and the United States. Both countries had violated the terms of the 1783 Treaty of Peace, the one by ill-treatment of the Loyalists, the other through failure to relinquish the western frontier posts. Although Britain made the American lapse a pretext for her action, the reason was commercial; the fur-trading interests feared loss of business should the Indians at these posts come under American influence. The negotiations which eventually culminated in the Jay Treaty of 1794, as yet had not assumed definite form, and the situation was decidedly uneasy. Lord Dorchester, the Governor General, was fully aware of the fact, and urged the Home Government to exercise discretion in the choice of governor for Upper Canada, situated as that province was in the region of the disputed posts. The Home officials, however, appear to have been satisfied as to Simcoe's fitness, and he was sent out.<sup>1</sup>

His work in Upper Canada exhibits a curious mixture of enterprise and conservatism. His plans for the development of the province were on a scale proportionate to its great resources. "I consider this country to be of immense value, whether it be regarded in respect of its immediate advantages, the future prospect of advantage, or the probable grounds for supposing that it will remain the most permanent foreign possession of Great Britain."<sup>2</sup> He wished to build up in this new and fertile region a vigorous agricultural class strongly British in sympathy, which might form a bulwark of defence against possible future aggression on the part of the United States; at the same time, its agricultural, mineral and forest resources would so develop as to add very considerably to the wealth of

<sup>1</sup>"I am perfectly aware of the force of your Lordship's reasoning on the necessity of having a person of judgment and discretion in the neighborhood of those posts, which are situated so distant from Quebec. . . . and I have the strongest reason to believe from the character of Colonel Simcoe, that he will answer that description. His present ideas are to fix his place of residence in a place which seems likely to afford him a convenient access to Detroit, the spot where that discretion appears now most necessary to be exercised."—Colonial Office to Lord Dorchester, September 16, 1791. Q 52, pages 209-210, or the Henry Adams transcripts of British Colonial correspondence, "Canada, 1789-1798." Can. Arch.

<sup>2</sup>To Dundas, June 2, 1791. Q 278, page 228. Can. Arch.



the Empire. It never occurred to him, however, that development might involve any variation from the scheme of things prevailing in an older community such as Britain. To his mind even the "town-meeting" type of local government was too democratic. For this reason, one of his first administrative acts was the appointment of the Lieutenants of Counties already mentioned, "in order to promote an aristocracy most necessary in this country."<sup>1</sup> Their powers extended to the appointment of magistrates and the nomination of militia officers. But the Colonial Secretary informed Simcoe that a policy of making all things like as in the motherland was not always prudent in a colony.<sup>2</sup> The chief objection was to the decentralizing of the executive power through multiplication of offices. Because appointments already had been made, no further action was taken, but in 1807 all appointments ceased.

Simcoe set about his task with enthusiasm. On September 17th he opened the first parliament of Upper Canada at Newark, on the Niagara River. As soon as was possible he began to make excursions through the province, in accordance with a preconceived plan to become "an eye-witness of the situation of the new proposed government," for which purpose he had requested "a canvass house similar to that sent with the Governor of Botany Bay." He based many details of his later settlement policy on the observations made during these journeys.<sup>3</sup> His plans were not bounded by the mere necessities of frontier life; while yet in London he had asked the Government for money to buy books "proper to lay the foundations of a public library," and he had entertained a plan of establishing "a literary society."<sup>4</sup> In 1797 the capital was moved from Newark to York, on Lake Ontario. Simcoe at once proceeded to make it the centre of an extensive system of provincial roads. The details of his scheme will appear in the discussion of his land policy.

Simcoe was strong-minded, conscientious, and energetic, and he accomplished much for Upper Canada. But he was impatient of delay or opposition. His ideas of colonial government were dominated by aristocratic and military conceptions quite unsuited to pioneer conditions. Finally, circumstances conspired to prevent him from following out to completion the plans he initiated. The Duke de la Rochefoucauld-Liancourt, a French traveller of distinction who visited the province at this time, perceived clearly this obstacle to permanent achievement. "The execution of his projects is . . . obstructed by numerous obstacles, the greatest of which is his determination to return to England at the end of five years. A plan of such vast magnitude, and which comprises so great a variety of designs, can be carried into execution by him only who was able to conceive it."<sup>5</sup>

<sup>1</sup>To Dundas, November 4, 1791. Q 279, Part I, page 79. Can. Arch.

<sup>2</sup>Portland to Simcoe, May 20, 1795. Q 278A, page 74. Can. Arch.

<sup>3</sup>For the quotations—Simcoe to Grenville, December 24, 1790. Can. Arch. Q 49, page 337. His account of the first extensive trip, as reported to the Lords of Trade, December 24, 1790.—Simcoe Papers, Book 9, page 660.

<sup>4</sup>A list of books for the library may be seen—Wolford Simcoe Papers, Book I, page 337. Quotations—Q 278, page 283. Can. Arch.

<sup>5</sup>"Travels through the United States, etc., etc."—Liancourt. Newman's translation, Ontario Archives Report, 1916, page 34.



In September of 1796 Simcoe returned to England, though with the expectation of later resuming the governorship of Upper Canada.<sup>1</sup> In his absence the Honourable Peter Russell, senior member of the Executive Council, administered the government. Russell had been one of Simcoe's personal appointees for office in the new province. Before leaving England in 1791, the latter had sought a proper person to supervise matters of revenue and expenditure. Russell was recommended, and having expressed a willingness to take any post that might offer "a competent income and respectable situation," was taken to Upper Canada in the role of Auditor and Receiver-General. It is characteristic of Simcoe's enthusiastic mind that he anticipated possible results from "the turn for mineralogy which is the amusement of Mr. Russell."<sup>2</sup>

The new administrator was of a temperament essentially cautious. His policy was safe rather than vigorous, perhaps in part because he felt the responsibility of his position. His fear of the Indians gave rise to not a little mirth on the part of his contemporaries in office.<sup>3</sup> No political happenings of importance occurred during his tenure of office, which was brought to a close in 1799 by the advent of a new Governor in the person of Lieutenant-General Hunter. The appointment was a matter of dis-appointment to Russell, who himself had applied for the post should Simcoe relinquish it.<sup>4</sup>

The appointment of Hunter, a general officer, was an experiment in combining under one man the offices of Commander of the Forces and Lieutenant Governor of Upper Canada. It was found to be wholly unsatisfactory, and was never repeated. His military duties entailed frequent absences from the province; the result was inadequate opportunity properly to discharge either the civil or military obligations of the office. In his absences the civil administration was deputed to a Standing Committee of the Executive Council, composed of Russell, Chief Justice Elmsley, and the Honourable John Shaw, with power to call in a fourth member in case of the unavoidable absence of any one of the three.<sup>5</sup> The occasional member usually was the Honourable John McGill, who later became a regular member of the Committee.

It perhaps was unavoidable that in these circumstances Hunter should find it necessary to rely upon the ability and integrity of the Executive Council in many matters where his own judgment was required. There appears to be little ground, however, for the sweeping charges of this nature which were brought against his administration. Criticism, moreover, was the natural concomitant of a political unrest which already was beginning to appear. The inevitable conflict between the idea of government by a privileged class and those ideas of self-government so inseparable from the life of an Anglo-Saxon pioneer community, was assuming tangible form. The chosen few in whose hands lay the administration of the public affairs had added to their numbers as the volume of those affairs increased, and now formed a class more or less distinct

<sup>1</sup>"If this country stands, and I return to pass five years therein, it will be with proper and honourable support."—To King, March 26, 1798. Q 285, page 417. Can. Arch.

<sup>2</sup>Simcoe to Dundas, August 12, 1791. Q 278, page 283. Can. Arch.

<sup>3</sup>Elmsley to Smith, February 18, 1798. Smith Papers, vol. B 8, page 23.

<sup>4</sup>Russell to Lord Uxbridge,—Q 286, Part II, page 457.

<sup>5</sup>Minutes of Executive Council, September 1, 1799. State B, page 437.

socially. The custom of the time still demanded a demarcation between governors and governed, but the exigencies of frontier life, demanding resourcefulness and ingenuity in a high order, soon bred a spirit of independence incompatible with narrow theories of class distinction. Unfortunately this opposition to the established order of things not always had wise leadership; demagogues were not lacking to give to a wholesome movement an evil repute. Jealousy of those in power had its place, while an unwise policy of repression on their part led to still more serious troubles.

Hunter died during one of his absences in the lower province in the early autumn of 1805. The Honourable Alexander Grant, whose name appeared first on the list of Executive Councillors, was elected President of the Council, and became administrator until such time as a new governor should arrive. Grant was inefficient, and during his short regime the popular feeling of dissatisfaction became noticeable. In August of 1806 Lieutenant Governor Francis Gore arrived to supersede him. Gore was a man of intelligent and moderate views, and his administration appears to have been conducted in the best interests of the province. But personal ability or worth alone could not obviate the difficulties of the political situation. A leader for the party of discontent appeared in the person of Justice Thorpe, recently appointed from England to the Upper Canada bench. Personal rivalries of a petty sort caused him to espouse the popular cause as a means of advancing his own interests. His language was violent; he charged the administration with gross inefficiency and corruption. Addresses commending his opinions and actions came from groups of electors, juries, and other local bodies; counter-addresses condemning him were sent to Gore. The charge brought against Thorpe and his followers was one of disloyalty to established British institutions, with a leaning toward those of the neighbouring republic. Eventually the conflict attained proportions sufficient to call for action from Britain, and Thorpe was recalled, mainly because of his abuse of a judicial post through political activity. But the controversy had aroused public interest, and others came forward to take his place.

By 1810, opposition to the administration had attained such proportions that a motion relative to Gore's conduct was brought before the British Commons. It failed to carry, but the attack was so significant that Gore went to England, ostensibly on private affairs. In his absence General Brock headed the Council. Conditions in Upper Canada at this time were not good. The population was less than 70,000. Kingston, the largest urban centre, had a population perhaps of 600, while that of York was only 500. There was no stage or other public conveyance in the province. Official communication with Montreal and Quebec regularly took one month, and was uncertain. Official letters from London still were a very long time in transit. Backwardness of land settlement within and difficulties of communication without constituted a double source of discontent.

In 1811, an international crisis had caused the appointment of a general officer, in the person of Major General Sir Isaac Brock, to control both civil and military affairs in Upper Canada. In the succeeding year came war with the United States, and until 1815, a succession of military officers held charge. The causes of the war were principally commercial;

the Jay Treaty had expired<sup>1</sup> in 1806 and was not renewed, while Britain's war with Napoleon intensified all the questions concerning neutral commerce which that treaty temporarily had adjusted. The elections of 1811-12 resulted in a Congress determined to war against Britain, while a crusade against Canada had been proclaimed through the West. The resulting invasions finally were abandoned in abject failure, but the Niagara frontier suffered severely. An interesting incident for the purposes of this study was the removal of the records of the Executive Council and Provincial Registry Office to a place of safety, before the capture and burning of York by American troops.<sup>1</sup> The Treaty of Ghent in 1814 left territorial questions much as they were before. One result of political importance to Upper Canada was the deepening of the existing dislike of all things American.

Gore returned in September of 1815, and the old troubles, quiescent during the war, broke out afresh. A new grievance had arisen in the failure of government adequately and speedily to remunerate, both in cash and lands, the militia who had served in the war. But mainly the trouble lay along old lines, now emphasized in various ways. The earlier agitation had intensified party divisions, so that now the presence of a bureaucratic governmental group as opposed to the popular radical group was clearly recognized. The situation was the logical outcome of paternalism under pioneer conditions. The first officials under Simcoe formed the nucleus of the governmental group. Upper Canada was the *British* province, preferred by office seekers on that account. All patronage was vested in the Crown, and was distributed principally through the Governor and his advisers. Worthless and inefficient members of the controlling caste might be given office in preference to efficient members of the radical party. The great majority of the settlers were farmers, possessing but little of either wealth or fine manners. Naturally, the official group sought to exclude them from social as well as administrative circles. The presence of American settlers within the ranks of the radicals increased the antipathy of the bureaucrats, themselves largely Loyalist in character.

The radical group asserted the existence of a scheme to maintain a family relationship as an aid to this official and social exclusiveness. The circumstance of marriages within the circle was to be expected, but the charge of a deliberate motive would be hard to prove. It was further asserted that improper use was made of official position for the benefit of relatives and friends, more especially in the matter of land grants. This charge, so serious in its import, will be considered in its proper place in the story of the land administration. Certain facts should receive consideration, however, in any discussion of the political parties of the time. On the one hand, the original members of the official group undoubtedly were men of good tradition, upright, faithful, and adequately efficient. They owed their position to the fact that they were the original creators of the state. They gave Upper Canada perhaps the cheapest and best public service possible under the existing conditions. But the system undeniably was bad. It gave the settler almost no opportunity of training himself for public service; instead, he found himself excluded from that

<sup>1</sup>Minutes of Executive Council, November 2, 1813. State F, page 143. Can. Arch.

service by arrangements over which he had no control. Again, there must be considered the inevitable effect, upon the official body itself, of holding office through successive generations by right of family alone. As time elapsed, the old traditions became fainter, and their place was occupied by official and personal interests which led to a regard for continuance in power rather than a regard for the welfare of Upper Canada. Men of ability, such as John Beverley Robinson and Bishop Strachan, continued to lead, but even their vision was so limited by habit of thought as to preclude their grasping the real significance of the political events of the day.

On the other hand, the leaders of discontent were limited, in their turn, to a mere comprehension of the existence of certain practical abuses, and a desire to correct them by any means equal to the task. Gore returned to England in 1817, and a weak administration under Smith had not improved the situation when Sir Peregrine Maitland arrived in August of 1818 to take his place. In the same month the latter reported to Lord Bathurst, then Colonial Secretary, that "a man of the name of Gourlay, half Cobbet and half Hunt," had been "perplexing" the province.<sup>1</sup> Gourlay, who had come to Upper Canada the previous year, was an enthusiastic advocate of emigration to the colonies as a means of bettering social and economic conditions in Britain. Naturally the land system first engaged his attention, and he readily detected in its defects a chief reason for the prevailing lack of development in the province. Unfortunately, his opinionative disposition and violent temper rendered him quite unfit to be the advocate of reform, and resulted in destructive rather than constructive criticism. He was exceedingly energetic, and in the course of his enquiries collected a mass of information containing considerable material of value. It was later published under the title, "A Statistical Account of Upper Canada."

Prior to Maitland's arrival, Gourlay had summoned a Convention of Delegates from all parts of the province, for the purpose of discussing measures of reform. Maitland was not sufficiently astute to overlook actions of this sort; he summoned Parliament, and obtained a law making illegal all conventions of a political nature. Twice already Gourlay had been imprisoned for alleged libel, in connection with petitions to the King in which abuses were vividly portrayed; upon both occasions he had been acquitted, and he was rapidly becoming a popular hero. In 1819 he was tried, on a legal technicality, as an alien, and was ordered to leave the province. He refused, was arrested, and then imprisoned for six months. The confinement injured his health, and while in an enfeebled condition he underwent a final trial at Niagara, which resulted in a sentence of banishment. His agitation, however mistakenly conducted, at least directed attention to certain defects in the existing methods of land administration, and the Home Government, anxious to avoid a repetition of the criticism, gave instructions that they be remedied.

Gourlay's motives were good, and only his lack of judgment prevented him from achieving larger results. His violence created an impression that he was a really dangerous agitator, and in the effort to suppress him the real causes of dissatisfaction dropped out of sight. It is pleasant to

<sup>1</sup>Q 324, Part I, page 129. August 19. Can. Arch.



remember that in 1841 the Home Government, acting on the report of a committee of the Assembly on a petition from Gourlay, gave recognition of the injustice accorded him. A life pension of two hundred dollars was granted as concrete evidence of the fact.<sup>1</sup>

Maitland's policy in the case of Gourlay gives an index to the attitude of the provincial executive as a whole toward all reformers. No higher motive was imputed to their actions than merely a desire to annoy the administration. It seems never to have occurred to the official mind that there might be two sides to the argument, or that critics might have reasons for criticism other than malice or envy. This unfortunate attitude persisted until after the outbreak of 1837, and was largely responsible for the extremes to which the reforming party went in their effort to obtain recognition of their claims. A modicum of tolerance would have disarmed the more violently radical leaders by removing their chief argument for active opposition.

Sir John Colborne succeeded Maitland in 1828. It is interesting to note that already tentative discussions concerning a possible union of Upper and Lower Canada had taken place, inspired mainly by the difficulty of equitably sharing the customs revenue. Money was scarce, as markets were few, and lack of funds in the provincial treasury resulted in the delaying of necessary public works. This circumstance in turn was made a cause of complaint against the administration. Fortunately Colborne tried to avoid Maitland's error of too aggressive opposition to the radical group, not because he sympathised with their views, but simply because it was a more sensible policy to pursue. He could not always control the anirrus of his followers, however, as exemplified in the case of Francis Collins. Collins was a printer in a small way, who published a paper called *The Canadian Freeman*. For criticism of the administration through the columns of this paper, he was tried for libel, convicted, and fined exorbitantly. The case came up for final decision in Britain, where the conviction was sustained, but the sentence was adjudged much too severe, and instructions were issued to Colborne to that effect. Popular indignation was aroused by this incident, because it was a day of journalistic license of a sort now quite unknown, and the government organs usually outdid their opponents in the matter of abuse.

The new revenue arrangement of 1830 might have been expected to appease the hostility of the radicals. By it a yearly surplus of about £2,500 over the Civil List was gained. But land troubles, which formed the nucleus about which centred the forces of discontent, steadily were becoming more difficult of adjustment, and a new leader had appeared. William Lyon Mackenzie was an agitator even more fiery and energetic than Gourlay. The violence of his attacks so angered the official group as to cause a repetition of the foolish policy of repression, even when clearly disapproved by the Home authorities.<sup>2</sup> After the autumn elections

<sup>1</sup>Gourlay refused to accept so small a pension. In 1859 an Order-in-Council provided for the payment of back-pension since 1842. (Minutes of Executive Council, State U, page 175). In April of 1866 further provision was made for the payment of \$4,361.10 to his daughters. (Minutes, State A.C, pages 414-16). He died in 1863. Can. Arch.

<sup>2</sup>"The only way in which such a person is likely to acquire a dangerous influence, is by causing it to be believed that he has been treated with injustice or oppression on account of his political opinions."—Goderich to Colborne, April 2, 1830. G 69, page 72. Can. Arch.

of 1834, Mackenzie headed a strongly organized anti-administration party in the Assembly. A Select Committee on Grievances was appointed, which eventually formulated a series of reports covering every branch of the public service. In addition to criticising the administration severely, the reports called for remedial measures of great magnitude and variety. The famous Seventh Report, drawn up under Mackenzie's personal guidance, perhaps did more to arouse the Home Government to inquiry into Upper Canadian affairs than had all previous efforts combined.

The three principal topics of enquiry in this Report were the abuse of patronage, the clergy reserves, and the land system in general. On each point the Home government, wiser than its provincial representatives, issued moderate and sensible instructions. In the matter of patronage, offices were to be reduced and consolidated wherever possible. Had the official group seen fit to follow out the spirit of these instructions, much trouble later would have been avoided. Colborne, on the eve of his departure from the province, foolishly allowed himself to be persuaded into action with respect to the clergy reserves in a manner which gave a false impression of the Home Government's attitude in that connection and, by implication, in other connections as well. The story, however, properly belongs to the account of the whole clergy reserves question.

Sir Francis Bond Head, later referred to by Mackenzie as "the Herald of pestilence and famine,"<sup>1</sup> took over the administration in June of 1836. He had little judgment and less tact, while in lack of political sagacity he much resembled his critic. He prided himself on his ability to outwit and disperse the radical party,<sup>2</sup> and after a feeble attempt at conciliation, he turned to active opposition. The Assembly, as a means of expressing want of confidence in the government, stopped the passage of supplies. Head retaliated by reserving all money-bills for His Majesty's consideration and refusing to grant any contingencies. In the elections of that year he openly supported the candidates of the official party: they were returned in such strength as to render opposition to them "a bootless kicking against the pricks."<sup>3</sup> Head chose to regard this event as a personal victory over the "Republicans." It is pleasant to turn from the noisy opposition of the radicals and the equally foolish actions of the official group to the opinions of those persons of judgment who, like Robert Baldwin, perceived in a truly responsible government the only solution of Upper Canada's political problems.<sup>4</sup>

In January of 1837 Head assured the Colonial Secretary that all opposition had ceased; ". . . democracy does not now exist in Upper

<sup>1</sup>Open letter head. Q 390, page 536. Can. Arch.

<sup>2</sup>"Do you happen to know why a little weasel always kills a rat?"—Compares himself to the weasel and the 'Republican' party to the rat. The rat is the stronger, but the weasel waits for a chance to bite the jugular vein, and never lets go.—Letter, April 27, 1836. Q 389, Part II, page 337. Can. Arch.

<sup>3</sup>So described, with unconscious humour, in Dent's "Upper Canada Rebellion," volume I, page 328. Can. Arch.

<sup>4</sup>"I feel assured that nothing but the immediate promotion of a local provincial ministry for the conduct of the internal affairs of the province, under the Lieutenant Governor as representative of the paramount authority of the Mother Country, and the announcement of the definitive intention of the Home Government to expect their governors to apply to such local Provincial Ministry the principles of practical responsibility acted upon with respect to the Imperial ministers in this country, can possibly restore confidence or tranquillity."—Baldwin to Joseph Howe, June Q 395, Part I, page 45. Can. Arch.

Canada—it is completely annihilated.<sup>1</sup> In December came Mackenzie's rebellion. It was an infinitely foolish affair, for permanent military success was impossible, and it gave point to the charges of disloyalty which had been brought against his party by its enemies. Yet it was not altogether without results. Occurring just at the moment of Queen Victoria's accession, it attracted wide attention, and in conjunction with the correlative rising in Lower Canada, under Papineau, was a principal cause of the despatch of Lord Durham's mission of investigation into Canadian affairs.

Head's lack of judgment finally involved him in a dispute with the Colonial Secretary. He had suspended from office a magistrate named Ridout on a suspicion of "Republican" sympathies. The matter came to the attention of the Home authorities, an investigation was ordered, and Ridout's loyalty was sustained. Head was then ordered to reinstate him, but refused. Refusal virtually meant loss of position; Head was given opportunity of resigning, and returned to Britain. Sir George Arthur succeeded him in March of 1838. The new governor had been engaged for twenty-five years in administering the affairs of various colonies, under the orders of twelve successive Secretaries of State. Unfortunately for Upper Canada, much of that experience had been gained in British Honduras, where he had quelled a negro insurrection, and in Van Diemen's Land, the present Tasmania, where he governed an unruly convict settlement. He was essentially a military officer, and as such was none too ready to season justice with mercy.<sup>2</sup> As civil administrator he was honest and not inefficient, but he was quite unable to appreciate the value of responsible government to a colonial people, holding John Beverley Robinson's view that it spelled separation from the mother country.<sup>3</sup> As a result, he saw in Mackenzie's followers only rebels against constituted authority, whom it was his duty to punish with all severity. He was incapable of realising that to a large portion of the population these men were merely political offenders. His refusal to grant a reprieve from the death sentence aroused violent hostility, besides drawing a rebuke from the Colonial Secretary. It was fortunate that he soon was superseded by Lord Durham, who, unlike his predecessors in Upper Canada, was able to sense the democratic trend of the times.

Early in 1839 Durham's task was completed, and a report on his investigations had been formulated. It has been described as one of the greatest state papers in the English language. In it he recommended the immediate union of the two Canadas, with a view to ultimate inclusion of all the British North American provinces, and the granting of full self-government to the whole. The influence of these recommendations upon subsequent development in Canada is obvious to anyone familiar with present-day Canadian institutions. An immediate result was the sending out of Charles Poulett Thomson as Governor General after Durham's return to Britain, with instructions to formulate a government consonant, as far as possible, with the principles outlined in the Report. Late in 1839 Thomson visited Upper Canada, temporarily superseding Arthur, who had resumed his official post at the end of Durham's dictatorship. These

<sup>1</sup>To Glenelg, January 13. Q 396, Part I, page 3. Can. Arch.

<sup>2</sup>Sir George Arthur and his Administration of Upper Canada," by W. Sage. Queen's Quarterly, July-September, 1918.

<sup>3</sup>Arthur to Normanby, August 21, 1839. Q 419, Part I, page 21. Can. Arch.

interruptions in his administration annoyed Arthur intensely. The province was greatly interested in the Report; everywhere responsible government was being discussed at "Durham" meetings. The attitude of the "Tory" or official party may be summarised in that of its leading member, J. B. Robinson. He claimed that Durham's estimate of conditions in Canada was entirely wrong; at the same time he failed to put forward any specific instances of error. He recognized in the idea of responsible government the keystone of Durham's structure, but considered it merely foolish.

The principal item of current business in the Upper Canadian legislature at this time was an investigation, by a Commission appointed at the request of the Assembly, into the state of various public offices. Its findings were embodied in the famous Report of 1840, which threw light on many causes of executive inefficiency. The more important of these receive illustration in the failure of the land offices properly to discharge their functions. The results of these inquiries could not at once become apparent, and political squabbles still continued to point the sharp division into parties. "I live in a fine neighborhood," wrote the schoolmaster of Whitby, "there is scarcely a Tory in it."<sup>1</sup> Reform was making rapid strides, however, in both Canada and Britain. In 1840 the Act of Union joined Upper and Lower Canada under one government, containing the germ of that self-rule which soon was to characterize the whole political structure. With the application of that Act the history of Upper Canada merged with that of the sister province, until, in 1867, both merged in the larger record of the confederated Dominion of Canada.

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<sup>1</sup>Q 419, Part I, page 60. Can. Arch.



## CHAPTER II.

PRIOR TO 1791.

The system of land tenure which prevailed throughout Canada prior to British occupation was the seigniorial tenure of Old France. In Canada it was adapted to relatively the same conditions as those which influenced its growth in the country of its origin—the need of defence against savage invaders. The seignior in this new land became once more a military leader, on guard against a very real enemy, the Iroquois Indian. It was with the object of checking Iroquois raids on settlements farther down the St. Lawrence that the first European settlement, in what is now the Province of Ontario, was founded. At Kateracoui or Cataragui, at the north-eastern extremity of Lake Ontario, where the city of Kingston now stands, Count Frontenac, Governor of New France, built a fort in 1673. A few years later, the land on which the fort stood was granted in seigniorie to the Sieur de la Salle, who built a stronger fort and used it as a base from which to explore the western country.

Exploration brought but little result in the way of settlement. La Salle established a post above Niagara, but it was abandoned and not permanently rebuilt until 1725. A third settlement was that of Detroit, on the site of the present city, where a trading post was built in 1701. The importance of these stations was commercial; they lay at successive intervals along the great water route by which the Indians brought down their treasures of fur to the French traders. But of settlement in the sense of permanent economic development there was none during the French régime.

When in 1763 the British acquired New France, the proclamation which set forth its future form of government gave full notice of an intention to encourage emigration from Britain and from older colonies also. The Governor in Council was empowered to bestow Crown lands on residents, especially "such reduced officers as have served in North America during the late war, and such private soldiers as have been or shall be disbanded in America," the motive being "to testify our Royal sense and approbation of the conduct and bravery of the officers and soldiers of our armies, and to reward the same."<sup>1</sup> Grants were to be proportioned to rank. Naval officers and seamen might share these privileges.

The Instructions to Governor Murray<sup>2</sup> give in detail the methods by which land grants were to be effected. A survey of Quebec Province was to be made as soon as possible, and information on every point of probable value in settlement was to be gathered. Townships were to be laid out: ". . . it has been found by experience that the settling planters in townships hath very much redounded to their advantage." They were to contain about 20,000 acres each, having, as far as possible, natural boundaries extending up into the country, and "comprehending a necessary part of the River St. Lawrence." In the most convenient part of each township

<sup>1</sup>Q 62A, Part I, page 114. Can. Arch.

<sup>2</sup>Ontario Archives, 1905, Ivi, s. 45.

there were to be town plots, as close as possible to navigable water. Allotments were provided for military, church and school maintenance. Sections 50 to 52 of the Instructions deal with procedure:

50. And whereas nothing can more effectually tend to the speedy settling Our said Colony, the Security of the Property of Our Subjects, and the Advancement of Our Revenue, than the disposing of such Lands as are Our Property upon reasonable Terms, and the establishing a regular and proper Method of proceeding with respect to the passing of Grants of such Lands; It is therefore Our Will and Pleasure, that all and every Person and Persons, who shall apply to You for any Grant or Grants of Land, shall, previous to their obtaining the same, make it appear before you in Council, that they are in a Condition to cultivate and improve the same, by settling thereon, in Proportion to the Quantity of Acres desired, a sufficient Number of White Persons and Negroes; And in case you shall, upon a Consideration of the Circumstances of the Person or Persons applying for such Grants, think it advisable to pass the same, in such Case You are to cause a Warrant to be drawn up, directed to the Surveyor-General, or other proper Officers, empowering him or them to make a faithful and exact Survey of the Lands so petitioned for, and to return the said Warrant within six months at furthest from the Date thereof, with a Plot or Description of the Lands so surveyed thereunto annexed; Provided that you do take Care, that before any such Warrant is issued, as aforesaid, a Docquet thereof be entered in the Auditor's and Register's Office: And when the Warrant shall be returned by the said Surveyor, or other proper Officer, the Grant shall be made out in due Form, and the Terms and Conditions required by these Our Instructions be particularly and expressly mentioned in the respective Grants. And it is Our Will and Pleasure, that the said Grants shall be registered within six Months from the Date thereof in the Register's Office there, and a Docquet thereof be also entered in Our Auditor's Office there, in Case such Establishment shall take Place in Our said Province, or that, in Default thereof, such Grant shall be void; Copies of all which Entries shall be returned regularly, by the proper Officer, to Our Commissioners of Our Treasury and to Our Commissioners for Trade and Plantations, within six Months from the Date thereof.

51. And whereas great Inconveniences have arisen in many of Our Colonies in America from the granting excessive Quantities of Land to particular Persons, who have never cultivated or settled it, and have thereby prevented Others more industrious from improving the same; in order therefore to prevent the like Inconveniences for the future, You are to take especial Care, that in all Grants to be made by you, by and with the Advice and Consent of Our Council, to Persons applying for the same, the Quantity be in Proportion to their Ability to cultivate; And you are hereby directed to observe the following Directions and Regulations in all Grants to be made by you; Viz.—

That one hundred Acres of Land be granted to every Person being Master or Mistress of a Family, for himself or herself, and fifty Acres for every white or black Man, Woman or Child, of which such Person's Family shall consist, at the actual Time of making the Grant, and in case any Person applying to you for Grants of Land shall be desirous of taking up a larger Quantity than the actual Number of Persons in his or her Family would intitle such Persons to take up; it is Our Will and Pleasure, and you are hereby allowed and permitted, to grant unto every such Person or Persons, such further Quantity of Land as they may desire, not exceeding one Thousand Acres over and above what they are intitled to by the Number of Persons in their respective Families;—Provided it shall appear to you, that they are in a Condition and Intention to cultivate the same; and provided also, that they do pay to the Receiver of Our Quit Rents, or to such other Officer as shall be appointed to receive the same, the Sum of five Shillings only for every fifty Acres, so granted, on the Day of the Date of the Grant;—

That all Grantees be subject to the payment of two Shillings Sterling for every Hundred Acres, to commence at the Expiration of two Years from the Date of such Grant, and to be paid yearly and every Year, or in default of such payment, the Grant is to be void;—

That every Grantee, upon giving Proof that he or she has fulfilled the Terms and Conditions of his or her Grant, shall be entitled to another Grant, in the Proportion and upon the Conditions abovementioned;—

That for every Fifty Acres of Land accounted plantable, each Patentee shall be obliged, within three years after the Date of his Patent, to clear and work three Acres at the least, in that part of his Tract which he shall judge most convenient and advantageous; or else to clear and drain three Acres of swampy or sunken Grounds, or drain three Acres of Marsh, if any such be within the Bounds of his Grant;—

That for every Fifty Acres of Land accounted barren, every Patentee shall be obliged to put and keep on his Land, within three years after the Date of his Grant, three neat Cattle; which Number he shall be obliged to continue on his Land, until three acres for every Fifty be fully cleared and improved:—

That if any Person shall take up a Tract of Land, wherein there shall be no Part fit for present Cultivation without manuring and improving the same, every such Grantee shall be obliged, within three years from the Date of his Grant, to erect on some Part of his Land one good Dwelling-House, to contain at least twenty Feet in Length, and sixteen Feet in Breadth; and also to put on his Land the like Number of three neat Cattle for every Fifty Acres;—

That if any Person, who shall take up any stony or rocky Grounds not fit for planting or pasture, shall, within three years after the passing of his Grant, begin to employ thereon, and so continue to work, for three years then next ensuing, in digging any Stone Quarry or other Mine, one good and able Hand for every hundred Acres of such Tract, it shall be accounted a sufficient Cultivation and Improvement;—

That every three Acres, which shall be cleared and worked, as aforesaid, and every three Acres, which shall be cleared and drained, as aforesaid, shall be accounted a sufficient Seating, Planting, Cultivation and Improvement, to save forever from forfeiture Fifty Acres of land in any Part of the Tract contained within the same Patent; and the Patentee shall be at Liberty to withdraw his Stock, or forbear working in any Quarry or Mine, in Proportion to such Cultivation or Improvement, as shall be made upon the plantable Lands, or upon the Swamps, sunken Grounds and Marshes, which shall be included in the same Patent;—

That when any Person, who shall hereafter take up and patent any Lands, shall have seated, planted and cultivated, or improved the said Land, or any part of it, according to the Directions and Conditions abovementioned, such Patentee may make Proof of such Seating, Planting, Cultivation and Improvement, in the general Court, or in the Court of the County, District or Precinct, where such Lands shall lie, and have such Proof certified to the Register's Office, and there entered with the Record of the said Patent, a Copy of which shall be admitted, on any Trial, to prove the Seating and Planting of such Land;—

And lastly, in order to ascertain the true Quantity of plantable and barren Land contained in each Grant hereafter to be made within Our said Province, you are to take especial Care, that, in all Surveys hereafter to be made, every Surveyor be required and enjoined to take particular Notice, according to the best of his Judgment and Understanding, how much of the Land so surveyed is plantable, and how much of it is barren and unfit for Cultivation; and accordingly to insert in the Survey and Plott by him to be returned into the Register's Office, the true Quantity of each kind of Land.

52. And it is Our further Will and Pleasure, that in all Grants of Land to be made by You, as aforesaid, regard be had to the profitable and unprofitable Acres, so that each Grantee may have a proportionable Number of one Sort and the other; as likewise that the Breadth of each Tract of Land, to be hereafter granted, be one Third of the Length of such Tract; and that the Length of such Tract do not extend along the Banks of any River, but into the main Land, that thereby the said Grantees may have each a convenient Share of what Accommodation the said River may afford for Navigation or otherwise.<sup>1</sup>

These sections are given in detail, as exemplifying the practice upon which later regulations in Upper Canada were to be based.

Many seigniors had sold their lands and returned to France. British purchasers, anticipating the early introduction of freehold tenure, paid little attention to French land practice. The Instructions to Governor Murray tended to foster this indifference. French law presented many difficulties to the British land-holder. Apart from differences in method of acquiring land, there were those of subsequent disposal. Mortgage of land en censive in security for a loan was a secret transaction, and a purchaser might remain in ignorance of it, to his obvious disadvantage. A settler purchasing land in a seigniorie had to pay to the Government the mutation fine, a fifth part of the purchase money, due, according to the Custom of Paris, upon the admission of each new seignior. So numerous were these points of difference, that British judges found it impossible

<sup>1</sup>Ontario Archives, 1905, lvi-lviii.



to administer or even to understand a system so foreign to their experience. But the French settlers objected strenuously to any deviation from the custom of the past, and a double system actually was in practice. British policy in Canada at this time held mainly to the one object of placating the French population. When complaints were made, the habitant was favoured, and in 1771 Additional Instructions were issued, completely reversing the land policy in favour of the French system. These Instructions were as brief as the first Instructions had been long:

Whereas it hath been represented to Us, that the Terms and Conditions, under which you are by Our Royal Instructions to you, authorized and directed to make Grants of Lands within our Province of Quebec under your Government, have been found to be inconvenient and inadequate; and that it would be more for our advantage, & for the benefit of Our Subjects inhabiting in and resorting to our said Province, if the ancient Mode of granting Lands which prevailed under the French Government before the Conquest and Cession of the said Province, was to be adopted; We therefore taking the same into Our Royal Consideration, and being desirous to promote as far as in Us lies, the Welfare and Prosperity of Our said Province, have thought fit to revoke & do hereby revoke and annul all such parts of our said Instructions to you; & every Clause, Matter and thing therein, which contain any Powers or Directions in respect to the granting of Lands within Our said Province; And it is Our Will and Pleasure & you are hereby authorized and empowered to grant, with the Advice of the Council of Our said Province, the lands which remain subject to Our disposal, in Fief or Seigneurie, as hath been practised heretofore antecedent to the Conquest thereof; omitting however in such Grants, so to be made by you, the reservation of the exercise of such judicial Powers, as hath been long disused within Our said Province. And it is Our further Will and Pleasure that all Grants in Fief and Seigneurie, so to be passed by you, as aforesaid, be made subject to Our Royal Ratification, and also be registered within Our said Province, in like manner as was practised in regard to Grants held in Fief and Seigneurie under the French Government.<sup>1</sup>

Petitions and counter-petitions followed in due course, but by 1774 the British Parliament had framed a definitive bill of government known as the Quebec Act, which set up in Canada the whole of the old civil law, much to the satisfaction of the French element. Not only might property be held according to the former custom, but in all matters of controversy relative to property and civil rights resort was to be had to the existing laws. However, this did not extend to lands granted by the Crown in common socage, and alienation by will or sale might be according to either British or Canadian form. Pursuant to the passing of this Act, fresh Instructions were issued to Governor Carleton in 1775. So far as lands were concerned, these Instructions merely reiterated the Additional Instructions of 1771.

In 1778 General Haldimand succeeded Carleton as Governor of Quebec: in the following year, upon his suggestion, a settlement was begun at Niagara. A strip of land along the Niagara river had been purchased from the Indians; farmers now were encouraged to settle on it in the vicinity of the fort, as a means of supplying the needs of the garrison. At first merely a temporary arrangement, it later became permanent, and in course of time regular patents for their lands were issued to the settlers.

In 1781 the first survey of the district above the Ottawa was begun; good progress in this work was made by Major Holland, who took charge some two years later. The United Empire Loyalist emigration had set in; by 1784 New Brunswick had become a province distinct from Nova Scotia, while some ten thousand of the immigrants had reached the district above

<sup>1</sup>Ontario Archives, 1906, page 56.



the Ottawa. It is interesting to note that the lands surveyed for these early settlers were divided into blocks called "seigneuries" or "fiefs,"<sup>1</sup> not "townships," and were to be numbered after the French fashion, rather than named in the British way. However, the Loyalists did name them, and even set up "town-meetings."

The close of the Revolutionary War and the influx of Loyalists called for special settlement regulations, which were embodied in Additional Instructions to General Haldimand, dated July and August of 1783.<sup>2</sup> They expressly provided for the allotment of lands to those British subjects of the former colonies who desired to retain their allegiance and live on British soil. Officers and men of His Majesty's forces serving in Quebec province and there disbanded were included. The lands were to be divided into distinct seignories, and allotted in the following proportions:

"To every master of a family, one hundred acres, and fifty acres for each person of which his family shall consist.

"To every single man fifty acres.

"To every non-commissioned officer of Our Forces reduced in Quebec, two hundred acres.

"To every private man reduced as aforesaid, one hundred acres.

"And for every person in their families, fifty acres."

An oath of allegiance was prescribed for the recipients of grants. It was arranged that the expense of laying out and surveying the lands would be defrayed by the Government, as also that of the patent, but only one-half of the usual fees of office would be allowed to the Surveyor-General and the other land officers.

By the August Instructions, reduced officers were to receive lands in the following proportions:

Field Officers .....	1,000 acres.
Captains .....	700 acres.
Subalterns .....	500 acres.
Staff Officers .....	500 acres.
Warrant Officers .....	500 acres.

The procedure in actually allocating these lands was very simple. Grants were assigned to each settler under a certificate signed by the Governor and countersigned by the Surveyor-General or his deputy. When a surveyor placed a number of settlers together on the land, they drew lots for their respective sites. After twelve months' occupation the holder of a certificate was considered entitled to a permanent deed.

Two years later came the first petition from the Loyalists of the upper region for the enjoyment in full of those British institutions to which they previously had been accustomed, and which even then were possessed by their brethren in Nova Scotia and New Brunswick. The name of Sir John Johnson headed the list of petitioners. Son of Sir William Johnson, he had commanded a loyalist regiment (Queen's Royal Greens) in the Revolutionary War, and at its close had lost his family estates. Thereupon he had come to live in Canada, where he became a figure of some importance in governmental circles, even to the extent of being proposed as first

<sup>1</sup>Instructions to Dorchester, August 23, 1786. Ontario Archives, 1905, page lxiv.

<sup>2</sup>Ontario Archives, 1905, lxiii, lxv.

Lieutenant Governor of Upper Canada.<sup>1</sup> In 1791 he was appointed Superintendent General of Indian Affairs for British North America. Johnson's proposal was significant. It amounted to the formation of a separate district in the upper part of Quebec province, analagous to Cape Breton in Nova Scotia, with a capital at Cataraqui (Kingston). In this district British law and practice alone should prevail. A chief argument used in favour of such an arrangement was the settling of land discontents: "the tenure of lands in Canada is such as to subject them (Loyalists) to the rigorous . . . . restrictions of the French laws and customs, which are so different from the mild tenures to which they had ever been accustomed . . . . (this) has occasioned a general discontent, and would have induced many to decline accepting their locations . . . . but for the influence of your petitioners."<sup>2</sup> The British Government, however, was not prepared to grant so radical a request.

In 1786 Carleton, now Lord Dorchester, returned to fill again the post of Governor General. In the Instructions issued to him on this occasion,<sup>3</sup> the most important addition to the clauses relating to lands was a special provision for an allotment of lands to officers and men of the 84th Regiment of Foot, in fulfillment of a promise made to that corps upon its formation. The special allotments were to be as follows:

Field Officers . . . . .	5,000 acres.
Captains . . . . .	3,000 acres.
Subalterns . . . . .	2,000 acres.
Non-commissioned . . . . .	200 acres.
Privates . . . . .	50 acres.

In 1787 the allotment to non-commissioned officers was increased to 400 acres, with 300 acres to private soldiers.

In June of 1787 Dorchester issued instructions granting to every head of a family who had settled and improved his grant, two hundred acres in addition. In the same year a report upon population, agriculture, and the settlement of the Crown lands was made by a Committee of Council. In it special mention was made of the desire of the Loyalists above Montreal to hold their lands in freehold tenure,<sup>4</sup> but on this point the Committee merely recommended that the Instructions of 1786 be adhered to. Johnson, who was a member, dissented strongly from this recommendation, and drew up a separate minute on it, in which he urged indulgence of the Loyalist demand.<sup>5</sup> Already the addresses and petitions of these "Western Loyalists" were becoming numerous. Some idea of the trouble and expense involved in compiling petitions in that time and place may be obtained from the circumstance that a memorial to Dorchester in Quebec, from certain petitioners in Montreal, on parchment, and weighing ten pounds, cost £28 6s. postage.

In 1788 other regiments disbanded in Quebec petitioned that the increase in allotments to the 84th Regiment be extended to them, and the

<sup>1</sup>Dorchester recommended him, but it was considered inadvisable to appoint a person already residing in the province and possessing large property interests in it. . . . Grenville to Dorchester, June 3, 1790. . . . Q 44, Part I, page 149. Can. Arch.

<sup>2</sup>Printed in "Canada and its Provinces," volume 17, page 31.—April 11, 1785.

<sup>3</sup>Ontario Archives, 1905, page lxxv.

<sup>4</sup>Ontario Archives, 1905, lxix.

<sup>5</sup>Constitutional Documents, 1759-1791, page 641.

request was granted in due course. By a circular letter from the office of the Governor's Secretary, dated January 19, 1790, it was announced that these grants likewise would be free of all expense. But the Loyalist objection to the French tenure only increased with increase in amount of grant. Moreover, by 1788, the upper country had received some 17,000 settlers, and was sufficiently populous to require definite judicial organization. So a new arrangement was made.

The upper region was divided into four districts named, out of consideration for the large German element in the United Empire Loyalist population, Lunenburg, Mecklenburg, Nassau and Hesse.<sup>1</sup> Lunenburg extended from the Ottawa river to Gananoque; Mecklenburg from thence to the river Trent; Nassau from the Trent to Long Point; Hesse comprised the western residue to Lake St. Clair. Evidently it was the intention to cater somewhat to the stated desire of the population for British land tenure. "It is the King's intention," Lord Dorchester was informed, "that the new settlers in that part of the province who now hold their lands upon certificate of occupation shall, at all events, be placed upon the same footing in all respects as their brethren in Nova Scotia and New Brunswick, by having their lands granted in free and common soccage, with a remission of quitrents for the first ten years."<sup>2</sup> As a matter of fact, these lands remained as much under French law as elsewhere throughout Quebec, but in practice the occupants treated the license to occupy as a free title to the land, and exchanged, sold, or divided it quite without reference to the Custom of Paris.

The mechanism for transaction of land business deserves examination in detail, because it formed the basis upon which the first land system of Upper Canada was constructed.<sup>3</sup> To obviate the delay and expense occasioned to many Loyalist settlers by lack of authority for allotting lands on the spot, Land Boards were established in each district.<sup>4</sup> Each Board consisted of at least three persons, Crown-appointed through the Governor at Quebec; usually seven or eight principal settlers and the commanding officer of the district were chosen. The authority of the Boards was to continue up to May 1, 1791, when it would be further determined. Each Board was empowered to receive applications for grants of the waste Crown lands in the district over which it had jurisdiction. Each application was to be by petition to the Governor in Council, stating the quantity and situation of the land desired, with the merits and pretensions of the petitioner or petitioners. It was incumbent upon the Board to hold periodical meetings, publicly advertised beforehand, at which all applications for lands were to be given due consideration in order of priority.

At these meetings, the loyalty, character, and pretensions of each petitioner were to be examined first. Satisfactory proof of these being adduced, the oaths of fidelity and allegiance would be administered. Then the applicant was to present a certificate of satisfactory examination to

<sup>1</sup>For the patent creating them, see Constitutional Documents, 1759-1791, page 650. Can. Arch.

<sup>2</sup>Sydney to Dorchester, September 3, 1788. Q 36, Part II, page 472-3. Can. Arch.

<sup>3</sup>A summary of these regulations, and succeeding ones to 1833, may be found in the Appendix to the 1834 Journals of the Legislative Assembly of Upper Canada.

<sup>4</sup>Minutes of Council, Oct.-Dec., 1788,—Q 41, Part I, page 231.

**EXTRACT from the Rules and Regulations or the Conduct of the Land Office,**  
**Department, dated Council-Chamber, 17th. February, 1789.**

**IV.** **T**HE safety and propriety of Admitting the Petitioner to become an inhabitant of this Province being well ascertained to the satisfaction of the Board, they shall administer to every such person the oaths of fidelity and allegiance directed by law. After which the Board shall give every such Petitioner a certificate to the Surveyor General, or any person authorized to Act as an Agent or Deputy-Surveyor for the District within the trust of that Board, expressing the ground of the Petitioner's admission. And such Agent or Deputy Surveyor shall within two days, after the presentment of the certificate, assign the Petitioner a single lot of about two hundred acres, describing the same with due certainty and accuracy under his signature. But the said certificate shall nevertheless have no effect, if the Petitioner shall not enter upon the location and begin the improvement and cultivation thereof within one year from the date of such assignment, or if the Petitioner shall have had lands assigned to him before that time, in any other part of the Province.

**VII.** The respective Boards, shall on petitions from Loyalists already settled in the Upper Districts for further allotments of land under the instructions to the Deputy Surveyor-general of the 2d. of June, 1787, or under prior or other orders for assigning portions to their families, examine into the grounds of such requests and claims, and being well satisfied of the Justice thereof, they shall grant certificates for such further quantities of land, as the said instructions and orders may warrant, to the acting Surveyors of their districts respectively, to be by them made effectual in the manner beforementioned; but to avoid nevertheless, if, prior to the passing the grant in form, it shall appear to the Government that such additional locations have been obtained by fraud.—And that of these, the Boards transmit to the Office of the Governor's Secretary, and to each other, like reports and lists as herein before, as to other locations, directed.

**III.** And to prevent individuals from monopolizing such spots as contain mines, minerals, fossils, and conveniences for mills and other singular advantages of a common and public nature, to the prejudice of the general interest of the settlers; the Surveyor General and his Agents, or Deputy Surveyors in different Districts, shall confine themselves in the locations to be made by them upon certificates of the respective Boards, to such lands only as are fit for the common purposes of husbandry, and they shall reserve all other spots aforementioned, together with all such as may be fit and useful for ports and harbours, or works of defence, or such as contain valuable timber for ship-building or other purposes, conveniently situated for water-carriage, in the hands of the Crown.

And they shall without delay give full and particular information to the Governor or Commander in Chief for the time being, of all such spots as are herein before directed to be reserved to the Crown, that order may be taken respecting the same.

And the more effectually to prevent abuses, and to put individuals on their guard in this respect, any certificate of location given contrary to the true intent and meaning of this regulation is hereby declared to be null and void, and a special order of the Governor and Council made necessary to pledge the faith of Government for grants of any such spots as are directed to be reserved.



the Surveyor-General or his deputy surveyor for the district. Within two days of the presentment of this certificate to the surveyor, that officer was required to assign the petitioner a lot of approximately 200 acres, at the same time giving a signed description of it. To avoid deception, certificates were to be invalidated if settlement and improvement were not begun within one year from the date of assignment, or if it were discovered that the same person previously had been granted land elsewhere in the province.

When a petition was received asking for more than the customary quantity of land, it was referred to the Governor and Council for decision. Quarterly reports of all certificates issued were sent to the Governor, and duplicates were distributed among the Boards. Settlers already living in the upper district were permitted to receive through the Boards the additional quantities of land specified in the June regulations of 1787, proper precautions being taken to avoid abuse of the privilege. Such additional grants were reported in the same way as regular grants. To prevent monopoly of advantages in location which might be of common value to all settlers, surveyors were required to report the presence of any land containing minerals or fossils, or suitable for a mill site. Such lands, with those capable of use as harbours or containing timber valuable for shipbuilding, were to be reserved to the Crown. Should a settler discover on his grant natural advantages of this sort, he must report them to the surveyor. Upon the reservation being made operative, he would receive compensation, usually in the form of another grant in lieu of the original one. Should any settler himself desire to use these reserves in the public service, as by erecting a mill, special arrangements to that end might be made through the Governor in Council.

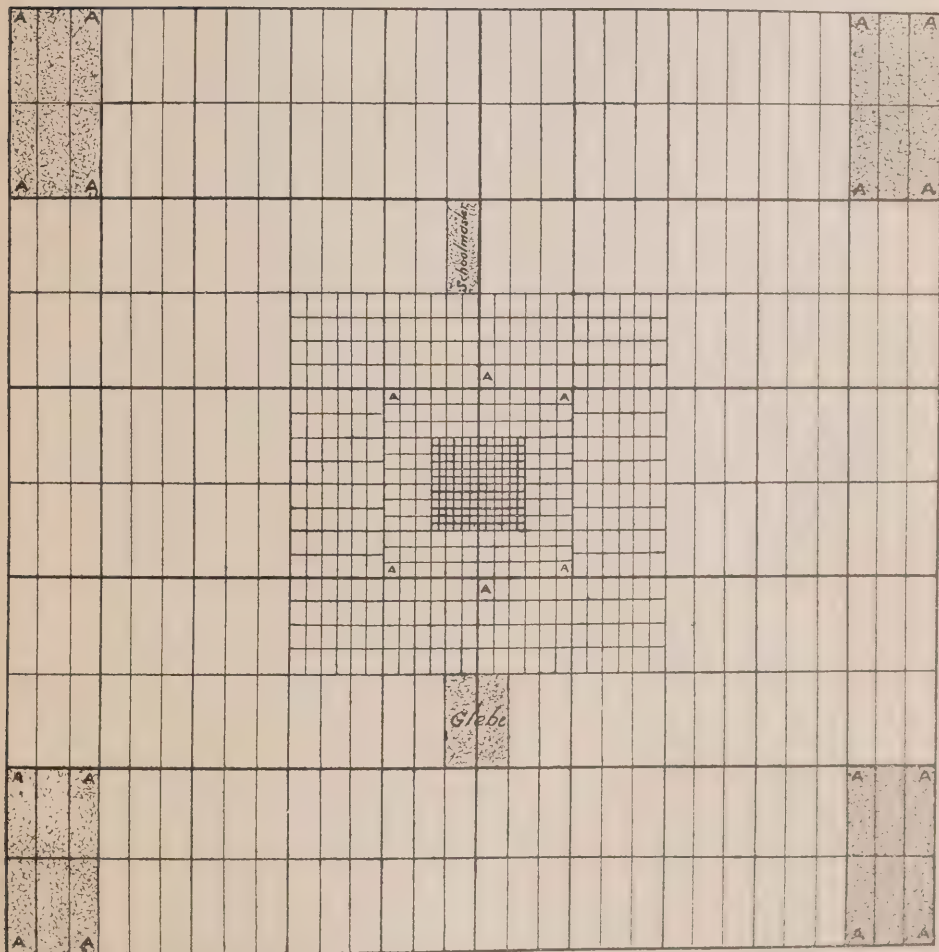
The surveyors were instructed to lay out the townships to be granted as nearly contiguous to each other as the nature of the country permitted, exercising due care in the running of boundary lines. Town plots, with glebes and other reservations for public use, and certain equal portions at the corners, were to be laid out in each. The corner areas were reserved for the future disposal of the Crown. If the township were inland, its dimensions were set at ten miles square. If upon navigable water, it was to be twelve miles in depth with a water frontage of nine miles. The principle underlying this specification of narrow waterfront was the fair division between townships of facilities for water transportation, always the easiest and most convenient in pioneer settlements.

The town plots in each township measured one mile square, and usually, if an inland township, were situated in the centre. If a water township, they were in the middle of the waterfront. Each town plot was laid out on a prescribed plan, with town lots of one acre, town parks of twenty-four acres, and squares and streets of stated dimensions.<sup>1</sup> Due provision was made for future public buildings and military defences. The Crown reserves in the corners of the township consisted of eight farm lots each. The contiguity of these lots is interesting in view of Crown-reserve difficulties later on. The whole plan was worked out with great care, and doubtless was expected to achieve complete success in practice. Unfortunately, the development of centres of population does not always follow

<sup>1</sup>See diagrams on pages 27 and 31.

# PLAN of a TOWN & TOWNSHIP

*of Ten Miles Square proposed for an Inland Situation  
 Agreeable to the Tenth Article of the Rules and Regulation  
 for the Conduct of the Land Department of the 17<sup>th</sup> of Feb<sup>r</sup>. 1789  
 By Order of His Excellency Lord Dorchester*



along the lines of governmental regulations, and a great many of the projected towns never materialized.

In practice, the laying out of a township usually was a gradual process, no attempt being made to effect a complete survey unless warranted by the number of settlers. When a body of immigrants elected to settle on a block of new land, surveyors were despatched to establish the baseline of a township. This done, a second line, parallel to it, was run at about one and a quarter miles to the rear, followed in due course by similar parallel lines at the same intervals, allowance being made at each interval for a road. These lines were termed "concessions." Sometimes the first concession alone was run out, until more settlers arrived. In 1788 a deputy surveyor had pointed out that unless the boundaries of each range of concessions were completed, great confusion would result later on, but the Council rejected the warning because of the expense involved—a decision for economy of rather an expensive kind, as it proved eventually.<sup>1</sup> Even so late as 1791, in connection with certain surveys in the new districts, the Council ordered that only the first, third, fifth, seventh, ninth and back boundary concessions be run, and forbade any division into lots save as required by the Boards.<sup>2</sup>

The allowance for roads usually was sixty feet along the first concession and forty feet along the succeeding lines. The farm lots along these concessions approximated 200 acres in area, having a frontage of about eighty rods and a depth of four hundred rods. At intervals of two or three miles, a space of forty feet between lots was left for a "side road" running at right angles to the concessions. In a township situated on navigable water, the concession lines, being more numerous, ran to the waterfront, giving a maximum of access to the water highway. This practice explains the variety of directions taken by concession lines in many parts of Ontario to-day. It should be noted that there was no strict uniformity in method of survey, and modifications of the practice here described were frequent. Inevitably a certain loss of accuracy resulted.

It was a part of the duties of the Surveyor-General's office to prepare a plan of each district, showing every tract granted. All returns of survey were filed in the office of the Council at Quebec. The Council Clerk then transmitted them to the Attorney-General, who prepared drafts of the patents. These were retained in the Council office until issuance at the order of the Governor in Council. All patents sufficiently advanced for the affixing of the Great Seal of the province were announced from time to time in the *Quebec Gazette*, the official newspaper of the time. Petitions rendered imperfect through faulty description or other defect were laid aside, and a list of them was published at intervals in a similar way, in order that the applicants might make the necessary corrections. Finally, a detailed schedule of all lots granted was kept in the Surveyor-General's office, and copies were lodged with the Governor's Secretary, the Council Clerk, and each Board. Every three months the schedule was revised and fresh entries made therein.

Certain additional regulations were framed in the months succeeding the installation of the Boards, covering matters either overlooked in the

<sup>1</sup>Q 51, Part I, page 363. Can. Arch.

<sup>2</sup>Q 51, Part II, page 387. Can. Arch.



N<sup>o</sup>      **CERTIFICATE** of the Board appointed by His Excellency the  
Lieutenant Governor for the District of      in the Province of  
Upper Canada, under the Rules and Regulations for the Conduct of the Land  
Office Department, dated Council-Chamber, Quebec, 17th. February, 1789.

**T**HE Bearer      having on the  
day of      preferred to this Board a petition  
addressed to His Excellency the Lieutenant Governor in Council for a grant of  
in the Township of

in the District of

We have examined into his loyalty and character, and find him duly qualified, we  
hereby assign to him the Town Lot N<sup>o</sup>

which he is hereby authorized to occupy and improve. And having improved the same  
according to the Ninth Article of the Additional Rules and Regulations hereunto sub-  
joined, he shall receive a grant of the said

to him, and his heirs or devisees in due form, on such terms and conditions, as it  
shall please his Majesty to ordain. And all persons are desired to take notice, that  
this assignment, and all others of a similar nature are NOT TRANSFERABLE by pur-  
chase, donation, or otherwise, on any pretence whatever, except by an act under  
the signature of the Board for the District in which the lands are situated, which is  
to be endorsed upon this certificate.

Given at      this      day of  
one thousand seven hundred and

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**EXTRACT** from the Additional Rules and Regulations for the Conduct of the Land-  
Office Department, dated Council-Chamber, Quebec, 25th August, 1789.

**IX.** THE Boards shall not issue any Certificate for more than one Town lot of one  
Acre, or one Town Lot and one Town Park of Twenty-four Acres together, to  
the same person (being the head of a family) and this only upon condition of his build-  
ing a dwelling house on such town lot, and occupying the same, within the space of one  
year from the date of the Certificate. And in cases of Competition the Boards are to give  
the preference to such applicants, for whose trades and occupations, the respective lots,  
on account of their situation near the water, or otherwise, may be best calculated, and to  
such sober and industrious mechanics, whose trades are most necessary to the convenience  
of the Township in general. And the boards are to be particularly careful to discounte-  
nance frivolous applications, & not to authorize any transfers of unimproved town lots and  
Town Parks, which only tend to create a mischievous Monopoly of the ground. Nor  
shall any Town parks be granted separately from Town Lots, the former being intended  
for the convenience of the settlers upon the latter; and a failure in the condition, upon  
which the Town lots are granted, shall operate the forfeiture of both.



beginning or else proved necessary by subsequent experience. On August 25th, 1789<sup>1</sup> the Boards were forbidden to issue to the same person any certificate for more than one town lot, or one town lot and park lot together, while the obtaining of even the single town lot was made conditional upon the erection and occupation of a dwelling house within one year of the date of the certificate. In case of competition, those persons were to be given preference whose occupations were best fitted to the local industries; thus in a town plot fronting on navigable water a shipwright would obtain precedence over a weaver. A further clause forbade surveyors to make allotments save on written authority of the Board, and all allotments were to be marked down plainly on such written authority, and then reported in full. In November, a regulation provided for the registration of all persons coming under the description of United Empire Loyalist, "to the end that their posterity may be discriminated from future settlers in the parish registers and rolls of the militia of their respective Districts and other public remembrances of the province, as proper objects . . . for distinguished benefits and privileges."<sup>2</sup> The Boards were charged with the execution of this registration, and were empowered to assign 200 acre lots to the children of these registered persons, upon coming of age or, in the case of daughters, upon marriage. But compliance with the general regulations was required, with proof of cultivation of any land already assigned to the head of the family. This regulation was destined to become a subject of controversy to an extent but little foreseen by its framers.

Early in 1790 came further regulations requiring the Boards to keep regular journals of their transactions, including all orders or instructions constituting authority for their actions. Certified copies of these journals had to accompany the usual reports on locations. All these records of land business were to be kept in a separate place in the Council office, where the Clerk of Council would have charge of their bestowal. The directions for filing these records are interesting, as being typical of the office methods of the time:—

"And that whenever the mass of the Land Office papers shall be so greatly increased, as to embarrass the daily ordinary researches, they be put into boxes of convenient sizes, numbered, and that there be a book kept for an alphabetical index, showing in the readiest manner the contents of each box, and that every paper be marked with the number of the box, to the end that it may be restored to its proper place, and confusion thereby avoided."<sup>3</sup>

This index book always was to be open to public inspection in the Council office, and a duplicate was to be kept ready in case of demand by any committee of Council.

By another series of regulations, the task of increasing the grants to all disbanded regiments in the upper part of the province, up to the special footing allowed the 84th Regiment, was shifted from the Surveyor-General's office to the Land Boards, who could deal with it much better on the spot. Applications for the increase were to be directed to the Boards in the usual form of petition to the Governor. The Boards either

<sup>1</sup>Ontario Archives, 1905, page lxxxv.

<sup>2</sup>Regulations of November 9, 1789. Appendix to the 1834 Journals, U.C., Ontario Archives, 1905, page lxxxv.

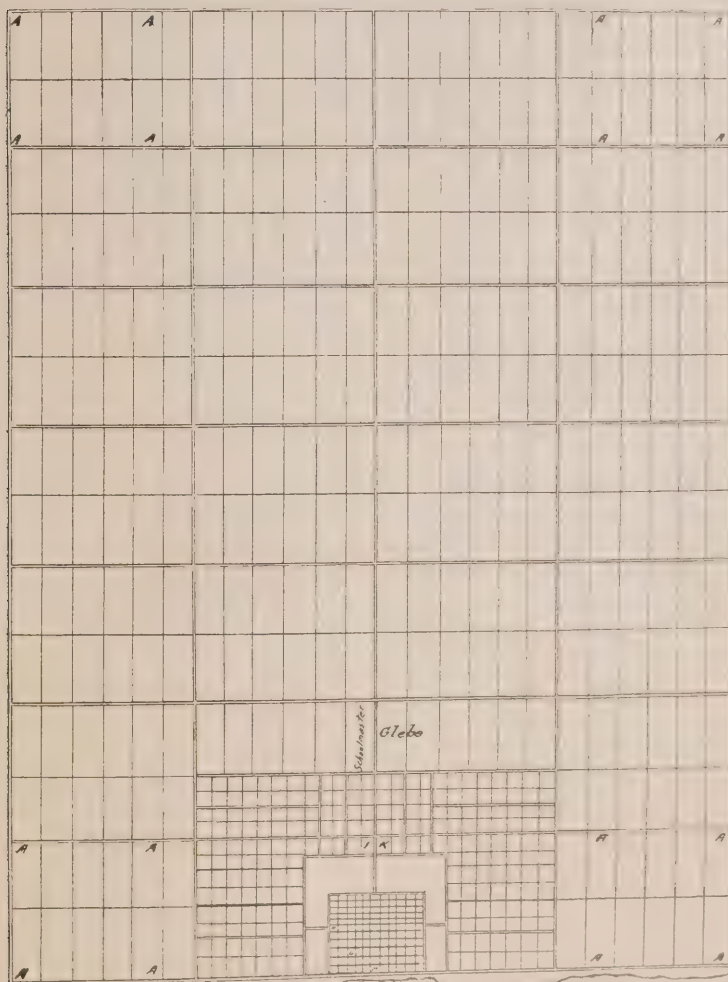
<sup>3</sup>Clause VI of the Second Addition to the Rules and Regulations of January 20, 1790. Ontario Archives, 1905, page lxxxvii.

# PLAN of a TOWN and TOWNSHIP

*of Nine Miles front by Twelve Miles in Depth proposed to be situated on a*

**RIVER or LAKE**

*Agreeable to the Sixth Article of the Rules & Regulations for the Conduct of the Land Office Department  
by Order of His Excellency The Right Honourable Lord Dorchester*



recommended or rejected them, subject to final approbation or disallowance by the Governor in Council. If satisfactory, certificates of occupation were to be issued in the ordinary way. It was incumbent upon the Boards to arrange in advance for the surveying of an extent of territory sufficient to satisfy any demands made under these or other regulations, "that there be no obstruction to the industry, ease, and comfort of the Loyalists."

But the work of settlement in Upper Quebec was not destined to move forward without interruption and difficulty. That bird of evil omen, the land speculator, was not long in appearing on the scene. As early as 1791 came complaints of abuses practised upon unsuspecting new arrivals, advantage being taken of the great distance from the seat of government and the lack of means of communicating official information. Sometimes new settlers were told that the land they had selected was the property of private persons by virtue of purchase from the Indians, and that the King had no lands in the country. As a consequence, numbers returned to the United States, or else purchased land at exorbitant prices from the supposed owners. This practice, of course, came to an end as the country became better settled and information spread. But a difficulty of a more permanent nature soon attracted attention. By the form of survey prescribed for townships situated on navigable waters, so much land was reserved that only two farm lots could be granted in the front concession, two in the second, and twelve in the third.<sup>1</sup> In days of difficult communication, the injury to settlement inherent in such a plan was serious. Other defects, which later would be clearly exemplified in practice, were not yet as easily discerned.

Prior to 1791, progress in settlement had been slow. The Loyalist settlements were scattered along the upper St. Lawrence, the Bay of Quinté, the Niagara frontier, and the Detroit river, the whole occupying but a small proportion of the region capable of settlement. As yet no grants had been made in the Toronto district on Lake Ontario, at Long Point on Lake Erie, and in the country between the Grand and La Tranche (Thames) rivers.<sup>2</sup> The total population was something under 25,000. Obviously, the burden of survey and settlement was to rest upon those who in 1792 and later years undertook to direct the affairs of the newly formed province of Upper Canada.

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<sup>1</sup>See diagram on page 31.

<sup>2</sup>Simcoe to Dundas, December 7, 1791. Q 278, page 22. Can. Arcn.

## CHAPTER III.

### THE PERIOD OF ASSOCIATED COMPANIES.

The authority of the Land Boards was to expire on May 1, 1791. As that day approached, it became necessary to make provision for the continuance of their work, until such time as the Home Government should issue further instructions. Accordingly, on March 3, a circular letter, issued by the Governor in Council, announced the appointment of new Boards, to be governed by the same rules as their predecessors. Their authority was to continue to June 1, 1793.<sup>1</sup>

A little later the Constitutional Act came into force, and on August 24 a royal Order in Council divided the province of Quebec into the provinces of Upper and Lower Canada. Sections 43 to 45 of the Act dealt with the matter of lands.<sup>2</sup> The one important change from the old Quebec system, so far as Upper Canada was concerned, was embodied in these words: "All lands which shall be hereafter granted within the said province of Upper Canada shall be granted in free and common soccage, in like manner as . . . in that part of Great Britain called England." The same privilege was to be extended to individual land holders in Lower Canada if so desired, otherwise the French tenure would remain in force. Eventually a very large number of holdings were changed to freehold, so that the two provinces in succeeding years had many land problems in common.

In Upper Canada, persons holding lands by virtue of certificate of occupation obtained under authority of the former Quebec government were to surrender the same to the person administering the government of Upper Canada, and receive a fresh grant in free soccage, such transfer and grant not to affect any interest in the land already acquired by persons other than the certificate holder. The Instructions to Lord Dorchester as Governor in Chief of Upper Canada, issued September 16, 1791, added the necessary details of procedure.<sup>3</sup> All persons applying for grants were to give evidence of their ability to cultivate and improve them. If the Governor in Council considered it advisable to pass the application on this count, a warrant was to be issued to the Surveyor-General, empowering him to make a survey of the lands wanted, the return to be made by him within six months at most, with a description of the lands appended. Then the grant was to be made out in due form, and registered in the Register's and Auditor's offices within a maximum period of six months from issuance. The lands so granted were to be laid out in townships in the usual way, and subdivided "in such manner as may be found most advisable for the accommodation of the settler," reserves for a Protestant clergy being distinctly specified.

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<sup>1</sup>Q 252, page 166.

<sup>2</sup>Ontario Archives, 1905, page civ.

<sup>3</sup>Q 425D, page 21.



A further clause had reference to a matter which was to occupy the attention of both Home and Provincial governments for many years to come—the prevention of large grants to persons not intending to settle or cultivate them. Dorchester was instructed to limit the size of grants to town lots of 1 acre, park lots of 24 acres, and farm lots of 200 acres, the recipient in each case to be “master or mistress of a family.” Persons of this description might be granted further quantities of land, however, not to exceed 1,000 acres over and above what quantity they had obtained previously. In all such grants, due regard was to be taken as to the quality and comparative value of the lands in any township, so that each grantee might receive a fair average in that respect. The length of any tract granted to one person was to be three times the width, and never was to extend along the banks of a river, but rather into the mainland, to prevent a monopoly of waterfront.

No expense was to attach to the securing of a grant, other than such fees as might be payable to the different officers of the land department, according to a table of fees to be established. The usual oaths of loyalty would be required of all prospective settlers. A proclamation of the various terms and conditions upon which lands would be granted in the province was to be promulgated as soon as possible, in order that all persons desirous of settling might be informed. Certain restrictions were attached to the exploitation of natural resources. No grant was to be made until surveyed by the Surveyor-General of Woods or his deputy, in order that Crown reservations might be made of “any considerable growths of masting or other timber fit for the use of Our Royal Navy,” more especially upon the rivers. A certificate was to be subjoined to each deed of grant, to the effect that no part of the land to be granted was included in any such Crown timber reservation. Any infringement of this clause would nullify the grant. Similar reservations were to be made of all lands containing coal, gold, silver, tin, iron and lead. The Surveyor-General was to survey with care all important landing places and harbours in the province, and report them to the Governor. Also he was to report all lands in new settlements fit for the production of hemp and flax. It will be noted that these instructions in part were repetitions of those previously given for the former province of Quebec, but given in greater detail in view of their specific application to the province of Upper Canada.

On November 11th, 1791, Colonel John Graves Simcoe reached Quebec on his way to fill the post of Lieutenant Governor of Upper Canada. He remained in the lower province during the winter, acquiring all available information about the region over which he was to exercise control, and consulting with the officials at Quebec on points of common interest to both provinces. The importance he attached to the systematic settlement of the land is shown by his correspondence with the Home Government. During this interval of waiting, he studied not only the land granting regulations as embodied in the Instructions to Dorchester, but also the regulations in force before the division into provinces.<sup>1</sup> On February 7 in the succeeding year, while still at Quebec, he issued a proclamation “to such as are desirous to settle on the Lands of the Crown in the Province of Upper Canada.”<sup>2</sup> A similar proclamation for Lower Canada was issued on the

<sup>1</sup>To Dundas, April 28, 1792. Q 278, page 104. Can. Archives.

<sup>2</sup>Ontario Archives, 1906, page 171.

*Bay de Lundy*

Province of } Dated the *Second* day of *October*  
 Quebec. } Anno Domini 1787

THE Bearer hereof *Joseph Tetreu*  
*Wife and Three Children*  
 being entitled to *Three*  
*Hundred* Acres of Land, by his Majesty's  
 Instructions to the Governor of this Province, has drawn  
 a Lot (N<sup>o</sup> *17*) consisting of *Four hundred*  
*acres in the 1<sup>st</sup> and 2<sup>nd</sup> Concess<sup>ion</sup>* in <sup>full</sup> part of the said Pro-  
 portion, in the Seigneurie of *N<sup>o</sup> 10*  
 and having taken the Oaths, and made and signed the  
 Declaration required by the Instructions, he is hereby  
 authorized to settle and improve the said Lot, without  
 delay; and being settled thereon, he shall receive a  
 Patent, Grant or Deed of Concession, at the expiration  
 of Twelve Months from the Date hereof, to enable him  
 to hold an Inheritable or Assignable Estate in the said  
 Lot.

*John Collins, D<sup>y</sup>.*

N<sup>o</sup> 48  
Joseph Peters  
Certificate

Joseph Peters claims  
the P. Concession, 2<sup>e</sup> is  
transferred to Forsgren  
whose claim is established  
before the Commission  
for the 2<sup>e</sup> Concession,

✓ 26 Oct 87

1787

Medland  
Township Noro  
3

At the Request of the Parties, the Board gives their sanction to Joseph Peters to transfer the within mentioned Lot, No. 17, to Joseph Fonguar.

Kingston  
Feb. 23. 1791 }

In Witness  
Neil McLean  
Richard Lestonight Junr

I Joseph Peters of Fredericksburgh do hereby make order to Peter Fonguar all my Right and Title for Ever of the within mentioned Two hundred acres of Land have Received the Value thereof as witness my hand this 27<sup>th</sup> day of July 1790 Joseph Peters

Charles Barnhart

John Peters

1790  
It is the 2<sup>d</sup> Concession of the within mentioned Land that is transferred to Fonguar



same date by Lieutenant Governor Clarke. The first clause of this proclamation announced the intention of the Crown to grant lands, in the form of parts of townships of the usual size. The second clause specified in each township "a reservation of one-seventh part thereof, for the support of a Protestant clergy, and one other seventh part thereof, for the future disposition of the Crown."

Early forms of reserves for religious and educational purposes were known in the American colonies. In Canada, the origin of such reserves is to be found in the Additional Instructions to Governor Haldimand, July 16, 1783, in these words: "in each Seigneurie a glebe to be reserved and laid out in the most convenient spot, to contain not less than 300 nor more than 500 acres." As has been noted, especial care was given in subsequent Acts and Instructions to specify a due percentage of reserves for the use of a Protestant clergy, the thirty-sixth clause of the Constitutional Act setting the amount at one-seventh of all lands to be granted. In 1789 a suggestion was made by the Home Government as to "the possibilities of making such reservations of land adjacent to all future grants, as may secure to the Crown a certain and improving revenue—a measure which, if it had been adopted when the Old Colonies were first settled, would have retained them to this hour in obedience and loyalty."<sup>1</sup> At a later date it was definitely decided that the reserved lands be so intermixed with grantable lands as later to render their possession a matter of importance to those settling in their vicinity. In quantity these Crown reserves were to be not less than the clergy reserves. This decision now was promulgated in the proclamations by Clarke and Simcoe.

The third clause of the proclamation gave limitations in size of farm lots, and in total quantity of land to be granted to any one person. Clause four gave the qualifications necessary to secure a grant, and the form of oath to be taken. Clause five described the mode of applying for grants, and clause six set forth the reservations of minerals and timber on them. The seventh clause prescribed the distribution of the Crown and clergy reserves amongst the grantable lands of the townships. Clause eight promised freedom from all expense save the official fees of the land department, to be established later, and clause nine required the registering of all patents, both clauses being repetitions of corresponding sections of the Instructions to Dorchester. The final clause stated that if the land petitioned for could not be supplied wholly in one township, the balance would be assigned in any other township desired, or the whole amount would be granted in another township, a fresh petition being required before action would be taken.

Copies of this proclamation were sent to each Land Board, and Simcoe recommended that extracts from it be inserted in the British newspapers, and the whole of it in the West India papers, as the best means of transmitting it to the United States. This circuitous route, he explained, was necessary because of the activities of American land jobbers, who tried to prevent Canadian land advertisements from reaching the American public.<sup>2</sup> Simcoe considered settlers from Connecticut especially desirable for Upper Canada.

<sup>1</sup>W. W. Grenville to Dorchester, October 20, 1789. Q 42, page 93. Can. Arch.

<sup>2</sup>Simcoe to Dundas, April 28, 1792. Q 278, page 104. Can. Arch.

On July 8, 1792, the Governmental party arrived at Kingston. On July 10th, when the several militia returns were laid before the Executive Council, with the deputy surveyors of the various districts in attendance, the business of dividing the province into counties was begun. The principle involved was the establishment of as equal representation in the Assembly as possible. On July 15th the whole was concluded, and on the next day Simcoe issued a proclamation carrying the new arrangement into effect.<sup>1</sup> The surveyed portion of the province was divided into nineteen counties. Their names, from east to west were as follows: Glengarry, Stormont, Dundas, Grenville, Leeds, Frontenac, Ontario, Addington, Lennox, Prince Edward, Hastings, Northumberland, Durham, York, Lincoln, Norfolk, Suffolk, Essex and Kent. At the same time the boundaries of the districts were revised, and they were renamed Midland, Home, London and Western. Where the population warranted it, the counties were divided into ridings, each represented in the Assembly by one member. Other counties with very small populations were linked together, each pair having only one representative. In all, the nineteen counties were given sixteen members of Assembly. Simcoe followed up this proclamation by another calling a Parliament. Newark was named as temporary capital, because it was the only place which had buildings capable of housing the two legislative bodies. On September 17, 1792, the first Parliament of Upper Canada assembled. It remained in session until October 15th. The two first statutes which it enacted established British civil and criminal law in the province.

In order to facilitate the business of granting lands, the four district land boards were subdivided as follows.<sup>2</sup>

Counties of Stormont and Glengarry .....	a board of five members.
County of Dundas .....	a board of four members.
Counties of Grenville and Leeds.....	a board of five members.
County of Frontenac (old Mecklenburg board)...	a board of seven members.
Counties of Lennox, Addington, Hastings and Prince Edward .....	a board of five members.
County of Lincoln (old Nassau board) .....	a board of eleven members.
Counties of Essex and Kent (old Hesse board)...	a board of ten members.

A circular dated October 21st was sent out to the old boards announcing this redistribution and making new appointments. Any three members of a board were to constitute a quorum. Special regard was to be given to the two-sevenths of reserved lands.

On the day after Simcoe arrived in the province, three members of the Executive Council had taken their oaths of office,<sup>3</sup> and had received instructions in the matter of granting lands. Petitions for grants were to be made to the Lieutenant Governor, who would lay them before the Council for recommendation, the final decision in doubtful cases remaining with himself. In his absence, only ordinary decisions might be made by the Council; all other cases were "ordered to be referred to His Excellency." The Council members were to examine carefully the qualifications of prospective settlers, and oversee the issuance of warrants of survey and certificates of grants, in the manner indicated in the Instruc-

<sup>1</sup>Ontario Archives, 1906, page 176.

<sup>2</sup>Minutes of Executive Council, Land and State A, page 36.

<sup>3</sup>Osgoode, Russell and Baby. Minutes of Executive Council, Land and State A, page 2.

tions of Lord Dorchester. They were to direct the registry of patents, supervise the survey and allotment of grants according to the authorized plan, and advertise publicly the terms and conditions of settlement. In a word, they were to put in motion the land-granting machinery provided by the Home Government.

The matter of fees required immediate attention, since largely upon them the Government would rely for payment of the ordinary expenses entailed in giving settlers legal titles to their lands. The Lieutenant Governor in Council had been empowered to set a table of fees for all departments of the Government, subject to amendment in Britain.<sup>1</sup> Simcoe now proposed that the table of fees used in Nova Scotia be sent for and adopted temporarily; a copy would be sent to the Colonial Office for approval. Meanwhile, the Government of Lower Canada should be consulted in the matter, to the end that some common basis suitable to both provinces might be found. The proposal was adopted. Governor Wentworth of Nova Scotia forwarded the desired table of fees, which was duly examined and discussed at a special meeting of Council in July of 1793. The correspondence with Lower Canada yielded no information, so the Nova Scotia table was adopted, with the notable exception of the section pertaining to land fees.

It was considered that the land fees were excessive, and that their use in Upper Canada "might operate as a check on population in this distant province."<sup>2</sup> So a more moderate scale was recommended. The matter stood over until 1794, when a letter from the Executive Council of Lower Canada made it known that the subject of a land-granting department was still under consideration in that province, and only when the necessary decisions had been reached could a table of fees be transmitted.<sup>3</sup> Whereupon the Council, taking into consideration "the absolute necessity" of ascertaining and fixing a table of land fees, formulated the following scale:<sup>4</sup>

TABLE OF FEES, 1794

Department	First Class 200 Acres and less	Second Class, Over 200 to 400	Third Class Over 400 to 800	Fourth Class, Over 800 to 1,200	Fifth Class	
					The first 1,000 acres	Each additional 1,000
Great Seal.....	£ s. d. 1 10 0	£ s. d. 1 17 6	£ s. d. 2 12 6	£ s. d. 3 15 0	£ s. d. 3 10 0	£ s. d. 0 15 0
Attorney-General..	1 0 0	1 5 0	1 15 0	2 10 0	2 6 8	0 1 0
Secretary .....	0 10 0	0 12 6	0 17 6	1 5 0	1 10 0	0 5 0
Register.....	0 5 0	0 6 3	0 8 9	0 12 6	0 12 6	0 3 0
Clerk of Council...	0 5 0	0 6 3	0 8 9	0 12 6	0 12 6	0 3 0
Surveyor-General..	0 5 0	0 6 3	0 8 9	0 12 6	0 10 6	0 5 0
Auditor-General...	0 2 6	0 3 1½	0 4 4½	0 6 3	0 6 3	0 1 6
Surveyor of Woods	0 1 6	0 1 10½	0 2 7½	0 3 9	0 3 9	0 1 0
Governor's Secretary .....	0 1 0	0 1 3	0 1 9	0 2 6	0 2 6	0 1 0
	4 0 0	5 0 0	7 0 0	10 0 0	9 14 8	1 15 6

<sup>1</sup>Dundas to Simcoe, July 12, 1792. Q 278, page 172.

<sup>2</sup>Minutes of Executive Council, July 19, 1793, Land and State A, page 118.

<sup>3</sup>Minutes of June 3, 1794. Ibid., page 153.

<sup>4</sup>Minutes of July 6, 1794. Ibid., page 189.

## INCIDENTAL OFFICE FEES

Department	Every 100 words in official papers	Every Search	Every Plan	For every 100 acres above 300 in third, fourth and fifth classes
Register.....	£ s. d. 0 1 0	£ s. d. 0 0 0	£ s. d. 0 0 0	£ s. d. 0 0 0
Surveyor-General ..	0 1 0	0 1 6	0 5 0	0 5 0

Soldiers disbanded in the country, and United Empire Loyalists, had their patents free of expense. In such cases, the government was to pay half-fees to the respective land officers, but these were not to extend beyond half the amount of regular fees paid on 1,200 acres (i.e. £5).

In the meantime the work of surveying lands for settlers received attention. In the first year of his governorship, Simcoe had reported to the Colonial Secretary on the personnel of the Surveyor-General's Department in Upper Canada. It consisted of only three deputy surveyors, with pay-roll set at seven and a-half shillings daily when working, and four shillings daily when unengaged. Simcoe apprehended that this force would not be sufficient for the new work, nor capable of directing what he believed would be eventually an extensive department. Hence he requested that a Surveyor-General for Upper Canada be appointed at once. In reply the Colonial Secretary stated that such an appointment was not then contemplated. "It is proposed that the Surveyor-General of Lower Canada shall likewise fill the same situation in Upper Canada, but without any additional salary. The attention of the Surveyor-General may certainly be bestowed at proper seasons on both provinces."<sup>1</sup> . . . . At other times the deputy surveyors could do the work. Simcoe, with good reason, objected strongly to such an arrangement. He pointed out that the employment of incompetent persons inevitably would result in litigation over boundary lines and kindred subjects of dispute. It was essential that a person of ability be placed in charge, at a salary sufficiently large to ensure permanent occupation of so laborious an office.<sup>2</sup>

The final result was the appointment in September of 1792, "till His Majesty's pleasure is known," of Lieutenant David William Smith, of the Fifth Regiment of Foot, to the post of Surveyor-General of Upper Canada.<sup>3</sup> Later on the appointment was confirmed by the Home Government. Smith already had had some experience in dealing with land matters in Upper Canada. When first the land boards were set up, he was stationed with his regiment at Detroit. In due course he was appointed Clerk to the Land Board of that district, and as Simcoe later informed the Home Government, was "the efficient person" of that board.<sup>4</sup> In recognition of these services he was elected a member of the first parliament, and in the same year received Simcoe's appointment as Surveyor-General.

<sup>1</sup>Dundas to Simcoe, August 15, 1792. Q 278a, page 12.

<sup>2</sup>To Dundas, June 27, 1792. Simcoe Papers, Book 3, page 105.

<sup>3</sup>Smith Papers, B9, page 53. Also Simcoe Papers, Book 4, page 263. Surveyor-General Holland of Lower Canada asked Simcoe to appoint his son John, but was refused.—Simcoe (Wolford) Papers, Book 2, page 207.

<sup>4</sup>Q 279, I, page 79.



On July 18, 1792, the Lieutenant Governor in Council passed upon the first petitions for lands in the Province of Upper Canada. One of these, presented by John Baker and several associates, was for four townships. Another, by A. and H. Spencer and their associates, was for the township of Haldimand.<sup>1</sup> At a later meeting on October 6, when for the first time petitions were given final decision, one township was granted to Baker and his companions, while the Spencers received the one township they wanted. At this meeting a total of ten petitions received consideration. *All were for townships*. Six were granted and four were left over for further consideration.<sup>2</sup> No set rule was laid down to guide action in such cases. The Governor and Council judged as best they could of the applicant's ability to settle the land, and made the grant or withheld it accordingly. Usually an additional grant of a farm lot, for each settler to be brought out later on, was reserved in the vicinity of the original grant. Hence a grant of a township meant that the "leader" and each "associate" would receive individual grants up to the 1,200 acres maximum, the rest of the township being reserved until such time as the association brought in settlers, when further grants would be forthcoming in the manner indicated.

In his proclamation to intending settlers, Simcoe evidently had not contemplated the intervention of these associated companies. They acted as middlemen, securing large grants and disposing of them at a profit to individual settlers. Immediately after the division into provinces the system had developed, to the detriment of settlement. The same condition of affairs prevailed in the lower province; over it Lieutenant Governor Prescott was destined to quarrel with his Council. Simcoe had a precedent for them had been received, chiefly from officers of the government, and it was generally understood that grants had been made.<sup>3</sup> It is interesting to note that the Home Government appears to have considered that it was chiefly by associated companies the waste lands of the Crown would be settled.<sup>4</sup> Simcoe attempted to safeguard the granting of lands in large quantities; in the autumn of that year he explained to Secretary Dundas that special care had been taken to assign grants of townships only "to those persons who seem likely to bring an acquisition of settlers into the country."<sup>5</sup> But not always could his judgment be infallible, and errors made in those early days were to prove costly later on. The system lacked proper checks on performance of promises, and some very troublesome precedents were established.

On the last day of 1792 there was read before the Executive Council a lands petition which is interesting in that it typifies the workings of the township grant, the settlement methods practised by applicants for such grants, the difficulties which they encountered, and the failure in which such schemes so often ended. William Wilcocks, a citizen of Cork, petitioned for 1,000 acres of land for himself and his associates, in addition to the 200 acres already granted him personally at Toronto.<sup>6</sup> The lands

<sup>1</sup>Minutes, Land and State A, page 17.

<sup>2</sup>*Ibid.*, pages 21-23.

<sup>3</sup>Simcoe to Portland, Q 282, II, page 508.

<sup>4</sup>Dundas to Dorchester, October 2, 1793. Simcoe Papers, Book 6, page 284.

<sup>5</sup>Simcoe Papers, Book 5, page 115, or Q 279, I, page 181. November 6.

<sup>6</sup>Minutes of Council, Land and State, page 49, or Smith Papers, B5, page 1.

desired were in the township of Norwich.<sup>1</sup> The petition was regarded with favour, and in addition to an initial grant, the applicants received in the township the usual reserve of approximately 200 acres for each settler to be brought out by them. Willcocks had come to Upper Canada earlier in the year, and "spent many months in exploring that fine country." According to his own story, he was grieved to see it uninhabited, at a time when thousands of his countrymen, ignorant of its resources, were emigrating to the United States. So he decided to undertake a settlement scheme, and after discussing the matter with Simcoe, secured a grant of land in the manner described. Then he returned to Ireland for settlers. Advertisements were distributed throughout his home district, extolling the merits of the new land, and setting forth the terms to emigrants. "Free" grants would be given to persons who could prove they were able to cultivate and improve them, at one guinea cash per hundred acres on a 200 hundred acre lot, 400 acres for six guineas, 600 acres for eighteen guineas, and so on up to 1,200 acres for sixty guineas. Also there would be a small rent of a penny per acre the first year, and three pence in succeeding years. A ship would be provided, on which cabin-passengers would pay twenty guineas passage and find their own wine, while common passengers would pay six guineas if Britain were at peace and seven if at war—a unique form of marine insurance. All passengers must provide their own beds and bedding. Tradesmen who could not pay their passage might be granted special terms. The country was pictured in glowing and not wholly truthful terms. For every sort of produce there was "ready sale at Montreal and other towns on the river," while provisions were "remarkably cheap." The land was covered with timber, and abounded in valuable fur-bearing animals, delicious fish, etc., etc.<sup>3</sup>

The war with France, coupled with the circumstances of his being elected Mayor of Cork, prevented Willcocks from sailing at once, but in 1795 he brought out some thirty-three settlers. Unfortunately he came by way of New York, necessitating a long journey overland, in the course of which his prospective settlers were "gradually seduced" from him by American land agents who offered more attractive opportunities of settlement. Having brought out part of his family, he decided to remain in Upper Canada, employing his son to conduct more settlers from Ireland. Again the unexpected happened; a vessel conveying settlers was captured by a French corvette, and all were carried prisoners to Bordeaux. Later in the year they were released, and reached Upper Canada safely, but in the meantime the township had been taken from Willcocks under a government order which cancelled all non-settled grants of the sort, putting a most complete stop to the whole scheme. But the council members were not devoid of sympathy, and in consideration of the ex-mayor's expense and labor in connection with his attempt at settlement, grants of 1,200 acres each were made his wife, his three daughters, his son, and his son's wife, on condition of residence within the province.<sup>4</sup>

In October of 1792 came the first United Empire Loyalist settlers under Simcoe's administration. They arrived at Kingston, and as most of them wished to settle immediately, the local surveyor was directed to

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<sup>1</sup>Later known as Whitby township.

<sup>2</sup>Q 280, II, page 515.

<sup>3</sup>Q 286, II, page 446.

<sup>4</sup>Minutes of Council, June 28, 1797, Land C, page 106.

locate them.<sup>1</sup> Some few proceeded as far as Toronto; one of their leaders, Bensley Peters, attended the Council meeting at Newark in order to state their choice of district, and the Council ordered lands for their grants to be surveyed in the desired locality.<sup>2</sup> In the same month several petitions were received for grants of islands, either in whole or part. It was decided, however, that it was "inexpedient to grant any island whatever."<sup>3</sup> This decision is an inter-relation of imperial and provincial policies. Undoubtedly the reason for it lay in the negotiations with the United States then being attempted by the British Government, with a view to setting up a buffer Indian state along the border, a plan approved by Dorchester, and in which Simcoe was to have a part.<sup>4</sup> In any such scheme the islands of the international waters would be of importance. In this connection mention should be made of the first map prepared by order of Simcoe, "a map of the River St. Lawrence," in case of a treaty with the United States, to show the importance of retaining the islands.<sup>5</sup>

The first session of the Upper Canada Parliament witnessed a disagreement between Council and Assembly into which a matter of land policy entered. The Assembly proposed and passed a "Rum Tax Bill" by which certain Government expenses were to be defrayed largely by a duty of sixpence per gallon on all spirits and wine passing through the country. The Legislative Council, with a tender solicitude for the rights of the merchants in Montreal who owned the said spirits, rejected the bill. "It had been suggested to them in conversation" that a county rate on land was the "natural" source of revenue. To this suggestion the Assembly answered that the smallest tax on real property would prevent immigration. The Council argued that the former quit-rent of four shillings and two pence per 100 acres imposed by the Government of Quebec had not prevented settlement, but the Assembly was not impressed, and indeed resented somewhat the loss of a favourite measure. Simcoe thought the members of the Assembly prejudiced against land taxation mainly because they were themselves landowners.

Meantime Simcoe was preparing for a vigorous settlement campaign. He lost no opportunity of acquainting both the Governor General and the Home Government with his schemes, but did not always gain the co-operation he expected. Lord Dorchester apparently shared his enthusiasm but little: Simcoe complained, perhaps with some justice, that many of his plans were met with coldness and indifference. Dorchester, he said, was old, and "like all old people, no friend of new ideas."<sup>6</sup> The Home Government, having had previous experience of infallible schemes for the rapid settlement of new regions, was inclined somewhat to discount the optimistic forecasts of the Lieutenant Governor. Simcoe wished to advertise widely for settlers, and offer them every possible inducement to come into the new province, arguing that once a population was obtained, wealth and prosperity followed. Especially did he wish to attract immigration from the neighbouring States. But the Colonial Secretary dissented from this theory of settlement. "Population is often the effect, never . . . the

<sup>1</sup>Simcoe to Dundas, November 4. Q 279, I, page 1.

<sup>2</sup>Minutes, Land and State, A, page 24.

<sup>3</sup>Minutes, Land and State A, page 34.

<sup>4</sup>Grenville to Hammond, March 17, 1792. Henry Adams transcripts, Canada, 1789-1798.

<sup>5</sup>Q 279, I, page 11.

<sup>6</sup>Liancourt, "Travels" . . . Ontario Archives, 1917, page 35.



cause of prosperity. It is not the true measure . . . of the strength, the riches, or the happiness of a country."<sup>1</sup> It was pointed out that if care were taken to render the situation of settlers comfortable and happy, that circumstance in itself would be sufficient advertisement. Moreover, it might anger other nations if Britain avowedly tried to induce their subjects to emigrate. A population outrunning the laws, regulations and customs of a new country might lead to lack of regularity and stability. This coldly theoretical view of the matter was not at all to Simcoe's liking, and he attacked the problem on its most practical side by pointing out that without rapid settlement the country would not pay its own expenses, since the Crown reserves constituted the sole internal asset of the Government, and their value depended wholly upon settlement.

A brisk business in land granting commenced in the spring of 1793.<sup>2</sup> Simcoe's mode of making individual grants was no more regular than in the case of township grants. The records of the survey office show how largely the personal element entered into his decisions.<sup>3</sup> The quantities granted to disbanded troops were those set by the 1787 regulations. But if an applicant were not well known, usually only 200 acres were granted at first, and the rest upon receipt of proper evidence from a superior officer as to his identity, or else upon conclusive proof of his intention to live on and cultivate his land. Those who improved the first portion often received an addition to the quantity still due. A case in point was that of a private soldier by name of William McLellan, who held a ticket for a total of 600 acres, including lands granted to the members of his family. He received 200 acres as a first allotment, settled on it with his family, and effected many improvements. When he petitioned for the remainder, he received 100 acres in addition, or 700 acres altogether. In cases where the wife happened to be a daughter of a Loyalist, her grant often brought the family total to a much higher figure than customary. Simcoe's desire being to people the province quickly, lands were granted freely to any persons who appeared likely to reside permanently on them, and larger quantities were granted to those apparently better able to cultivate them.

The temptation to "disloyal" persons from the United States to share the favourable terms granted to new settlers was great, and many made application. The land boards, not quite certain of the legality of refusing such applicants, reported the matter to the Lieutenant Governor early in 1793. For their future guidance an Order-in-Council was passed, which required that careful scrutiny be made in the character of applicants, and that all suspected of disloyalty be rejected.<sup>4</sup> In April of this year it was decided that the clause of the 1789 regulations which reserved all mill-sites was both unnecessary and troublesome, in that water-power was plentiful and many otherwise suitable lots were being withheld from settlement. Accordingly it was ordered that landowners having these conveniences be permitted to use them, provided navigation was not hindered or the passage of fish blocked. Military communication between Lakes Erie and Ontario alone was excepted.<sup>5</sup> The item concerning fish is suggestive of pioneer

<sup>1</sup>Dundas to Simcoe, July 12, 1792. Q 278A, page 7.

<sup>2</sup>Smith Papers, A6, page 514. Mr. Small, Clerk of Council, requests that Mr. Ridout, of the Surveyor-General's office, be allowed to assist him, otherwise he cannot make out a complete list of "the land granted this day." March 11, 1793.

<sup>3</sup>Examples in volume B11 of Smith Papers.

<sup>4</sup>April 13, Minutes of Council, Land and State A, page 66.

<sup>5</sup>April 16, Minutes of Council, Land and State A, page 69.



conditions; in a land where the food supply at times was uncertain, it was important that nothing should hinder the run of the homely "sucker" up the creeks and rivers leading inland. The same Council meeting which decided this point dealt also with a petition from Richard Duncan, fourteen other persons, and "very numerous associates," requesting no less than thirty townships. It was unanimously resolved "that the prayer of this petition is inadmissible." But the incident is significant as showing the proportions to which the associated company movement had grown.

In June of this year David William Smith took the oaths of office as Surveyor-General, and at once began to prepare diagrams for new plans of survey which would properly enforce the provisions for Crown and clergy reserves. Several were prepared, one of which was approved, later becoming known as the "chequered plan."<sup>1</sup> The idea of a town plot in each township was abandoned, except where circumstances strongly favoured it. The disposition of the Crown reserves was altered; they were distributed uniformly throughout the whole township, and to them were added the clergy reserves. The reserved two-sevenths made a total of ninety-six lots, which meant six and six-sevenths lots in each concession. "For the sake of uniformity, as well as to prevent too great a subdivision"<sup>2</sup> it was made seven lots, giving in each township an additional two lots to be disposed of by the Government at will. The townships already surveyed before the passing of the 1789 regulations had been laid out thirty-five lots in width; in their case no fraction of a lot was left over.

Sometimes the reserves could not be distributed uniformly, and special arrangements were necessary. If part of a township had been settled before the chequered plan came into practice, allotments for clergy reserves would be lacking. Usually these were now reassigned in larger reserved blocks to the rear of the township or in another township not yet settled. In the case of military communications, usually roads, often it was desired to place settlers along their whole extent. Here again a special arrangement was necessary, the sum total of the customary reserves would be reassigned, either in a block elsewhere in each township or else distributed among the rear concessions. A capital example of this irregular allotment in special circumstances was that of Lincoln County, where the Crown reserves of certain townships were combined in a single large block, with the clergy reserves in a similar block, both to the rear of the county, partly in order that no reserves should be situated along the route of Dundas street, and partly to induce settlement near the American border.<sup>3</sup> These departures from the strict letter of the regulations at first were opposed by the Home Government, but eventually were confirmed.

It is interesting to note that in Lower Canada, where similar changes in plan of survey were being discussed, it was decided to have the reserves in large blocks, and some persons in Upper Canada petitioned for the same arrangement there, but the Council refused to consider it.<sup>4</sup> Later on the chequered plan of distribution was adopted in Lower Canada also, at the request of the Home Government. It should be remembered that the

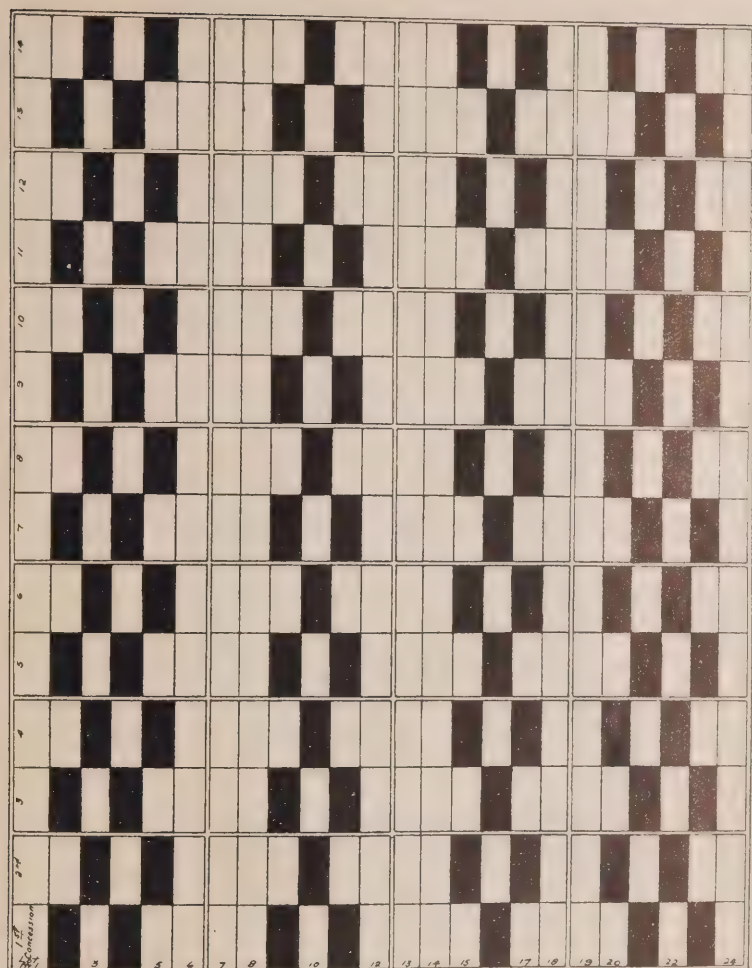
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<sup>1</sup>See diagram on page 47. Approved by Home Government in March of 1794. Q 287, I, page 139.

<sup>2</sup>D. W. Smith's report on the reserved lands. Q 282, I, page 112.

<sup>3</sup>See diagram on page 49.

<sup>4</sup>Simcoe Papers, Book 6, page 249. Simcoe to Dundas, September 16, 1793.



*The*  
*Chequered Plan, For a ~*

*Township of nine Miles in front, by 12 Miles in depth, supposed to be situated on a River or Lake, laid out into Farm Lots, or about 200 acres each agreeable to the 10<sup>th</sup> Article of the Rules & Regulations for the conduct of the Land Office Department of the 17<sup>th</sup> February 1789 so far as it relates to farm Lots, shewing in what manner two sevenths of the Land may be reserved for the Government & Clergy. The Lots coloured crimson show the Reserves.*

*D. W. Smith*  
*Act<sup>y</sup> Surveyor General*

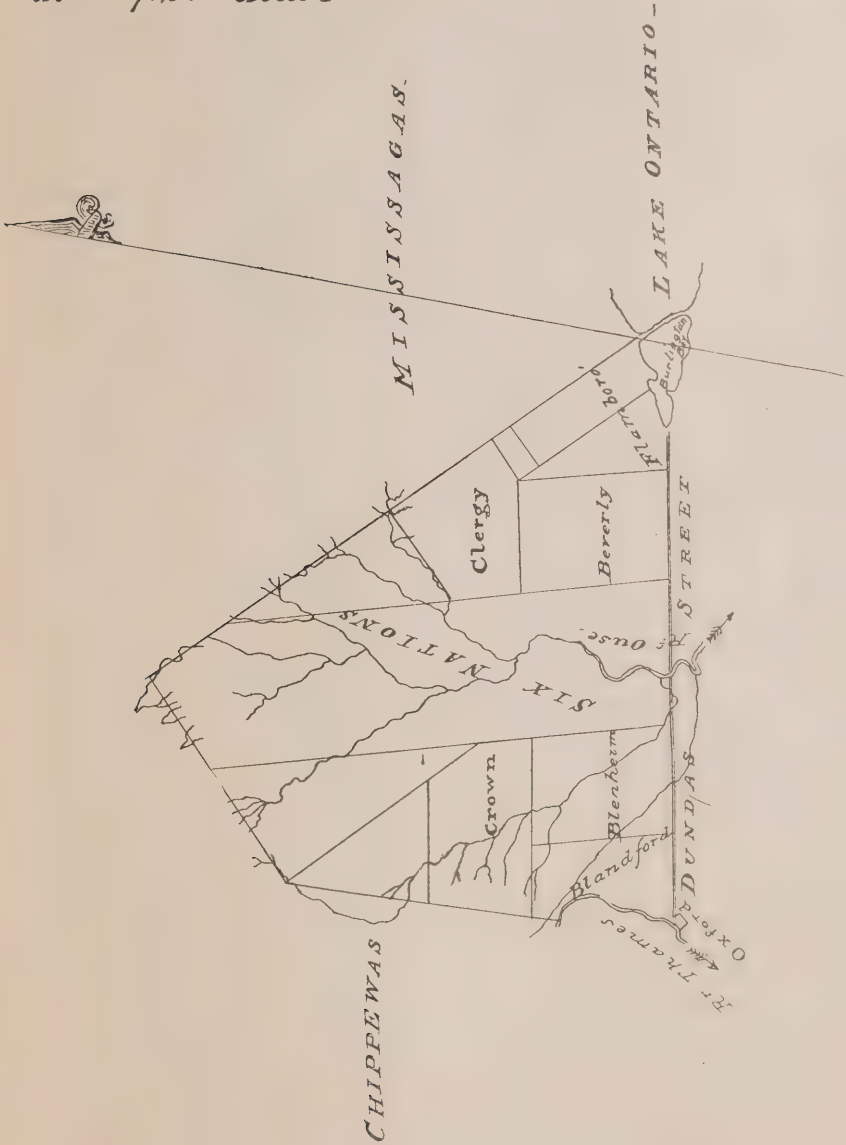
reserves existed only because of the prospect of their eventually becoming sources of income, in the one case for the expenses of the Provincial Government, in the other case for the maintenance of a Protestant clergy. The reason for equalized distribution throughout a township was the belief that thus they would share in any rise in value consequent upon progress in settlement. To put it baldly, the Government constituted itself a land speculator on a very extensive scale, hoping to acquire profits through increased values due to settlement and improvement. And precisely as the land speculator of to-day, especially in the Canadian West, retards the general progress of the community and therefore defeats his own ends, so the British Government was to delay settlement and hinder progress by its policy respecting these reserves, incidentally experiencing vexatious financial difficulties from the same cause.

In October of 1793 the Council found it necessary to deal with the matter of grants obtained under false pretences by persons posing as United Empire Loyalists. A number of adventurers had used the steady influx of Loyalists as an opportunity for obtaining grants in this way, and discovery of the imposition had followed. The Council was uncertain what action, if any, should be taken, and Simcoe turned for advice to the Colonial Secretary. The instructions received in answer were of a negative sort; such persons were to be left undisturbed in possession, but care was to be taken that the mistake was not repeated. At least they were settlers, and if they improved their holdings and behaved properly they would be of some value to the community. If they left the country they could have no further claim on Government, land already having been granted them. Of course they were to receive no further favours, but it was clearly the duty of the Lieutenant Governor, now that they were in the province, to render their situation agreeable.

About this time Simcoe and his officers explored the country between York, Lake Simcoe and Lake Huron. This done, he began the construction of a road between York and Lake Simcoe, to be named Yonge Street in honour of Sir George Yonge, then Secretary for War. It was intended as a military convenience rather than an aid to settlement, being part of an overland route to Lake Huron, by way of Lake Simcoe and Georgian Bay, by which troops could be rushed to the upper posts on Lakes Huron and Superior in case of war with the United States. It was partly built during 1794, and completed the year following. While at the time the settlement motive was of secondary importance, yet it was solely as a means of opening up the country that this road achieved results, for its military services never were required.

One of Simcoe's favourite schemes for the new province had been the formation of a corps of militia. He believed it would ensure the defence of the province, while enabling settlers to devote their whole time to cultivation, and in addition would provide an agency for the construction of roads and other public works. Its military utility was to be of secondary importance; mainly it would be employed in clearing lands and in other work useful to settlement. The lands cleared would be sold by auction, and the returns from sales would go to reward the soldiers. A company of artificers to lead in these non-military activities was to be included in the corps. The plan was presented and approved, and the corps was formed under the name of the Queen's Rangers, with Simcoe as commanding officer. It was by this corps that the actual construction of

Plan for setting apart one Seventh of Land for the Crown,  
equal to one Seventh, set apart for the Protestant Clergy, of  
Eighteen Townships in the County of Lincoln, containing  
about 71,680 Acres.





Yonge Street was performed. Afterwards the Rangers began the construction of another great military highway, paralleling Lakes Erie and Ontario, to be named Dundas street in honour of the Colonial Secretary of that name. The first portion of the road to be constructed lay between the head of Lake Erie and the River La Tranche (Thames).

This militia corps promised well as a factor in opening the province, but as settlement progressed and fear of invasion decreased, it had to be disbanded, mainly because of desertion and the difficulty of obtaining fresh recruits. In a new country where a man easily might acquire land of his own, there was little inducement to a military life of the sort led by the Rangers. Moreover, the Home Government was inclined to look upon the scheme as altogether too expensive to be worth while. In 1796 the disbanded Rangers were placed on the land, receiving the same proportions and terms as the Loyalist regiments.<sup>1</sup>

Meanwhile the matter of revenue was giving concern, inasmuch as the income derived from the land as yet was almost negligible. The usual practice was the levying of a tax, but Simcoe found it exceedingly difficult to find subjects of taxation. The Colonial Secretary offered him but little assistance, merely observing that that circumstance in itself was proof that little revenue should be required.<sup>2</sup> But he suggested that there could be little objection to a moderate county tax on land, "especially if such rate is not extended to uncultivated land, or is not to commence until such land has been a certain number of years in cultivation." The then state of the province gave little hope of any considerable revenue from this source, but a beginning had to be made, and the first assessment law of Upper Canada was placed on the statute book, under the caption "An Act to Authorize and Direct the Laying and Collecting of Assessments and Rates in every District within this Province." Assessors were to be appointed locally; all property was to be valued by them, and householders were to be divided into eight classes corresponding to the amount of their property, from £40 to £400 and over.

Early in 1794 the Council first confronted a matter which was to prove troublesome for many years. It was found that in every township there were a number of persons settled on land to which they held no legal title. These "squatters" originated in a number of ways, but chiefly either through the negligence of Government in not claiming the land before it had been long occupied, or through the ignorance of the persons concerned, who at first were not aware of the necessity of securing a grant, and later claimed "squatters' rights" because of long occupancy. An immediate cause often was the lack of means of livelihood, with the resultant necessity of cultivating the nearest land in order to live. Sometimes, too, there would be difficulty in obtaining a grant because of lack of influence and means, or the Government might consider the applicants of questionable character and unlikely to stay on the land.<sup>3</sup> Whatever the cause, these trespassers now became troublesome to the surveyors in locating grants, and preventive measures were necessary. Accordingly, the deputy surveyors were ordered to report any suspected trespassers to the Surveyor-General, who, if it were proved, was to issue a notice requiring them to vacate immediately. If the warning were not obeyed, he was to report the matter

<sup>1</sup>Minutes of Council, April 6, 1796. Land and State A, page 375.

<sup>2</sup>Q 278A, page 16. Dundas to Simcoe.

<sup>3</sup>Durham's Report, Lucas. Vol. III, page 106.

to the Council, that the Attorney-General might be directed to take legal measures for their removal. All those who refused to vacate would be disqualified for any grant of the Crown lands.<sup>1</sup>

About this time came the first intimation that the working of the land boards was not always regular. It was found necessary to write a sharp letter to the Land Board of the Home district requesting an immediate return of its business since its establishment, with an explanation as to why no such returns had been made.<sup>2</sup> A week later there came a memorial from the Clerk of Council, stating that through the establishment of land-granting departments in the several districts his fees of office were diminished very considerably, and asking that some readjustment be made. The Council complied by ordering that in future the Clerk, by deputies where necessary, should execute the duties of clerk to the several land boards.<sup>3</sup>

Although nearly ten years had passed since the first allotments of land in the province, scarcely any had been properly ratified. The matter of exchanging the temporary certificates of occupation held by early settlers for permanent patents was one of considerable difficulty. It was complicated by numerous sales and exchanges, and disputes over ownership increased as settlement progressed. In 1793 the Council decided to issue regular patents as soon as possible, commencing with the Home district, in which the Government offices were situated. In May of 1794 an order to that effect was issued.<sup>4</sup> Simcoe was wise enough to give the patent to a present holder rather than to an original holder of a certificate, thus avoiding the trouble of tracing sales and exchanges. It was further ordered that all new settlers holding certificates without a regular assignment from the Surveyor-General should apply at once for such assignment, and not attempt to take land until it had been received. In this way duplicate claims for the same lot were avoided.

In July of 1794 the Surveyor-General brought before the Council a plan for the laying out of a future town of York, where the City of Toronto now stands. Simcoe himself had seen the advantages of the site, and personally had ordered the making of a survey and plan. The Council now approved, and recommended that it be carried into execution. At the same time certain regulations to govern its actual settlement were drawn up; each person occupying a town lot was required to build a house on it within three years, or forfeit the patent. At the end of the year Simcoe reported some seventy families settled in the vicinity of the projected town.

On November 6 the Council decided that the existing state of the province rendered the land boards unnecessary, and recommended that their authority cease. Thenceforth intending settlers were to deal directly with the permanent executive officers of the Government. All land petitions of an unusual character were to be made to the person administering the Government, through the Clerk of Council, while in ordinary cases a magistrate in any county, as appointed by the Lieutenant of the County, was authorized to give to proper persons a recommendation, on

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<sup>1</sup>Minutes of Council, May 24, 1794. Land and State A, page 130.

<sup>2</sup>Minutes of Council, Land and State A, page 129.

<sup>3</sup>Ibid, page 137.

<sup>4</sup>Ibid, pages 52 and 130.

receipt of which the local deputy surveyor would assign him a single lot of 200 acres. The fees to non-privileged persons were set as follows:<sup>1</sup>

	£	s.	d.
To the magistrate (for administering oaths) .....	1	0	
To the surveyor (for search) .....	1	6	
To the surveyor (for assignment) .....	1	0	
To the Clerk of Council .....	6	0	
For the title deed .....	4	0	0
Total .....	£4	9s.	6d.

An Act establishing Registry Offices throughout the province, passed in 1795 at the fourth session of the first Parliament, paved the way for a general issue of patents to certificate holders everywhere. By order of the Lieutenant Governor in Council,<sup>2</sup> a proclamation was issued, directing all persons holding certificates of location in the Western, Midland and Eastern districts to deposit them with the local magistrates, that they might be transmitted to the Attorney-General, who would issue in exchange for them regular deeds bearing the seal of the province. In the Home district all certificates were to be lodged with the Attorney-General in person. To compel obedience to these new regulations, the time for bringing in certificates was limited to six months, after which the land might be considered vacant and be granted to other applicants.

Late in 1794 the question of fees again had come to the front. The temporary table of fees adopted earlier in that year had proved unacceptable to the Home Government, mainly because of the deviation from the Nova Scotia table in the matter of fees on land grants. The Colonial Secretary, in a letter to Simcoe, made mention of a set of instructions for future guidance in this respect, already forwarded to Dorchester in Lower Canada. Through an oversight the instructions were not enclosed, and Simcoe had to ask Dorchester for a copy. All this took time, and it was not until the summer of 1795 that a decision could be made. On July 8 the following table of fees on grants was adopted:<sup>3</sup>

	£	s.	d.
On 100 acres or less .....	1	14	2
Over 100 acres to 500 acres .....	2	9	2
Over 500 acres to 1,000 acres .....	3	6	8
On each additional 1,000 acres .....		11	0
If more than 20 proprietors, a fee on each right.....		5	0
Fee on each license of occupation .....		15	0

The apportionment of fees amongst the various officers concerned in making out patents led to a minor dispute, and incidentally to a slight change in procedure. When the temporary set of fees had been made out, the Council members decided that all title deeds should pass through the hands of the Attorney-General, since by virtue of his office it was his duty to transact all the legal affairs of the Crown, and hence it was proper that he supervise the legal execution of all deeds. This arrangement still continued, and as his duties in this respect really were transferred from those of the Provincial Secretary, it was decided to provide for his fees by deducting their equivalent from the land fees of that officer. But Jarvis, the Secretary, objected to any such deduction, claiming that all deeds

<sup>1</sup>Ontario Archives, 1905, page ex.

<sup>2</sup>Ontario Archives, 1906, page 184.

<sup>3</sup>Minutes of Council, Land and State A, page 259.

were uniform, differing only in dates, names and boundaries, that the Attorney-General's fiat for their issuance was made merely on the evidence presented through the certificate of occupation and similar papers, and hence that it was not essential to the validity of the patents. Whereupon Attorney-General White offered to let him draw up all deeds until such time as outside authorities could be consulted in the matter, but absolved himself of any responsibility for grants of which he had not examined the patents. The Council, therefore, decided that the change should be made, and granted the Attorney-General half of the Secretary's fees. The table then stood as follows:<sup>1</sup>

	£	s.	d.
Clerk of Council:			
For reading petition and entering it in Council book .....	1	6	
For license of occupation or assignment up to 1,000 acres .....	1	10	0
"                    "                    on every 1,000 acres additional .....		5	0
Surveyor-General:			
For search .....	1	6	
For assignment .....	1	6	
To deputy surveyors in districts, for search .....	1	0	
"                    "                    for assignment .....	1	6	
Deputy Surveyor-General of Woods:			
100 acres to 500 acres .....	1	0	
Above 500 acres .....	2	0	
Governor:			
For Great Seal on grants not over 1,000 acres.....	10	0	
"                    "                    on every 1,000 additional .....	5	6	
For license of occupation .....	10	0	
Provincial Secretary:			
Under 100 acres .....	5	5	
100 to 500 acres .....	10	0	
Above 500 acres .....	15	0	
Where there are over twenty proprietors, each right .....	2	6	
Attorney-General: Same as for Secretary.			
Chief Surveyor:			
Under 100 acres .....	5	0	
100 to 500 acres .....	10	0	
Above 500 acres .....	15	0	
If over twenty proprietors, each right .....	5	0	
Auditor-General:			
For auditing each grant .....	6	8	
Register:			
For recording grants of 500 acres or less .....	2	6	
"                    "                    500 to 1,000 acres .....	5	6	
"                    "                    each 1,000 up to 20,000 acres .....	1	0	
"                    "                    a township .....	2	0	0

But the matter was not yet settled. Upon receipt of this table by the Home Government the Duke of Portland, at that time Colonial Secretary, informed Simcoe that it still differed from the model form as used in Nova Scotia and Lower Canada and sent copies to substantiate his criticism. Simcoe was intensely annoyed. He claimed the error was due solely to the fact that Dorchester had failed to supply him with an exact copy. He complained at some length of his inability to secure from the Governor General satisfactory information on such matters: "In the civil administration of this Government I have no confidence whatsoever in any assistance from Lord Dorchester."<sup>2</sup> Another Committee on Fees was convened, and the final result was, as follows:<sup>3</sup>

<sup>1</sup>Minutes, July 21, 1795. Land and State A, page 271.

<sup>2</sup>Simcoe to Portland, June 18, 1796. Q 282, II, page 461.

<sup>3</sup>Minutes of Council, June 27, 1796. Land and State Book A, page 366.



	£	s.	d.	Total.
On grants under 100 acres:				
Governor .....	1	0	0	
Secretary .....		5	0	
Attorney-General .....		5	0	
Chief Surveyor of Land .....		5	0	
Auditor-General .....		6	8	
Clerk of Council .....		5	0	
Register .....		2	6	
				£2 9 2
On grants of 100 and not exceeding 500 acres:				
Governor .....	1	0	0	
Secretary .....		10	0	
Attorney-General .....		10	0	
Chief Surveyor .....		10	0	
Auditor-General .....		6	8	
Clerk of Council .....		5	0	
Register .....		2	6	
				£3 4 2
On grants above 500 and not exceeding 1,000 acres:				
Governor .....	1	0	0	
Secretary .....		15	0	
Attorney-General .....		15	0	
Chief Surveyor .....		15	0	
Auditor-General .....		6	8	
Clerk of Council .....		5	0	
Register .....		5	0	
				£4 1 8
				£ s. d.
On grants above 1,000 acres:				
Governor, for each 1,000 after the first.....		5	0	
Secretary " " .....		2	6	
Attorney-General " " .....		2	6	
Register " " up to 20,000 acres .....		1	0	
Register, for recording a township .....	2	0	0	
Secretary, for each right having over twenty proprietors.....		2	6	
Attorney-General " " .....		2	6	
Chief Surveyor .....		5	0	
Other officers:				
Deputy Surveyor of Lauds, for each search .....		1	6	
" " for each assignment or description .....		1	0	
Deputy Surveyor of Woods, for each certificate .....		1	0	

"And as the grantees of land can never have communicated with the Deputy Surveyor of Woods, the Committee begs leave to recommend that the Secretary of the Province be directed to charge his fee to them with the other fees, and receive it upon issuing the patent, and to collect all the fees coming to the officers of Government upon every patent issued, and to account with them, respectively, for the same on June 30th and December 31st in each year, charging to each  $2\frac{1}{2}\%$  for his trouble."

A number of minor difficulties in the working of the land system came up for discussion in the latter half of 1795. One was the general tendency of reduced officers to leave their lands shortly after the certificates of location were issued. The Council saw the necessity of requiring at least a degree of settlement and cultivation, and made a formal statement to the effect that grants of land to reduced officers were upon condition of their becoming bona fide settlers in the province.<sup>1</sup> Upon this condition only would such grants be made in future. Another difficulty came in connection with the reservations of Crown timber on grants. The

<sup>1</sup>Minutes of Council, August 20, 1795. Land and State A, page 321.

Instructions to Dorchester forbade the making of grants before the Surveyor-General of Woods, or his deputy, should have marked out as reserves any parts containing timber fit for the use of the Royal Navy. But in the case of grants made by certificate or assignment from the late Government of Quebec Province it was impossible to comply with this regulation. So the Lieutenant Governor in Council now ordered that all grants which had been assured to the grantees prior to the formation of the Upper Canada Government should issue without reference to this requirement, but in all subsequent assignments full compliance would be expected. The Deputy Surveyor of Woods was ordered to certify to the Surveyor-General the extent of all reservations already made, and if in any township none had been made, the same was to be certified.

Still another difficulty was the tendency of settlers in "associated" townships to disregard the regulations governing ordinary residents on grants. Probably because they were brought into the country under the ægis of "leaders" and their "associates," such persons often considered it unnecessary to fulfil the requirements as to taking of oaths and making application for assignment. So now the Surveyor-General was instructed to notify them that they must at once produce a recommendation from the grantee specifying the position of their lots, and a certificate of proper qualifications as settlers in the province. They were warned that they must take out assignments for their lands before locating on them, as all persons refusing or neglecting to comply would be turned off the land.

A hint of inadequate machinery for the work in hand is contained in Simcoe's complaint to Portland late in 1795, as to lack of Executive Councillors.<sup>1</sup> Chief Justice Powell had resigned his office, and a successor had not yet been appointed, a circumstance which reduced the number of members to four, "and in consequence the public business is by no means carried on in that methodical manner which I could wish . . . the burthen in general falls with extreme weight on myself, the Receiver-General, and Major Shaw." Non-attendance had something to do with this state of affairs; Commodore Grant commanded the naval forces on the lakes, while Baby, the other member, had mercantile interests in Detroit which could not be neglected. Again, to quote Simcoe: "The sickness of a member stops the whole business of the Province." Inadequate remuneration for services rendered probably constituted a reason for lack of interest and irregularity of attendance. Simcoe incidentally pointed out that none of the Government servants, including himself, could live according to their station on the allowance granted by the Crown. After some further correspondence on the subject, two additional Councillors were appointed, the Honourable John McGill and the Honourable D. W. Smith, Surveyor-General, while the Honourable John Elmsley at once was sent out to succeed Powell as Chief Justice.

Late in 1795 there came up for decision the status of land certificates as granted to the first settlers. As has been related, Simcoe tried to bring about an exchange of these certificates for regular title deeds, but there appears to have been a general unwillingness to effect it. As there was no ready means of bringing pressure to bear on the holders, land affairs remained in a most unsatisfactory state.<sup>2</sup> The number of persons affected

<sup>1</sup>Simcoe to Portland, November 8, 1795. Q 282, I, page 18.

<sup>2</sup>Simcoe to Portland, December 22, 1795. Q 282, I, page 62.

was considerable, as most of the certificates had changed hands in various ways. Some holders were settled on their original grants, with certificates as first made out. Others had purchased certificates of the original holders before transfer of certificates was forbidden, and hence had not been able to register the transfer. Still others had purchased after the land boards were formed, and had had the transfer entered on the certificate under authority of a board, but many others had purchased from original holders without such authority, and hence against the letter of the certificate. A few had purchased at sheriff's sales, while large numbers were occupants under devisee by the original holder.

In all cases, the chief legal difficulty in declaring valid these certificates was the fact that in them no allowance had been made for the reserves of the clergy, and the thirty-sixth clause of the Constitutional Act expressly stated that no grant of land in which these reserves were not specified should be valid. At the suggestion of Chief Justice Powell, Mr. Hamilton, of the Legislative Council, privately had sought legal advice on this point while in England. It was to the effect that, since the Constitutional Act made no mention of such certificates, therefore these were invalid, and only by legislative authority could they be made valid.<sup>1</sup> Hamilton reported this decision to the Lieutenant Governor. Already the Attorney-General of Upper Canada had announced that it would be necessary to recall all such deeds and reissue as many as possible with a reserves clause added, and that in other cases legislation must be passed, vesting in the Lieutenant Governor power to adjudge validity. Simcoe forwarded these opinions to Portland, and asked for a ruling. Portland laid the matter before the law officers of the Crown, and early in 1796 a decision was reached, embodying the suggestions made by the Attorney-General. After much discussion a bill was passed which legalized the setting apart of clergy reserves in solid blocks wherever settlement had taken place before reservation had been required. These blocks were to be equal in area to a proportion of one in seven of the total area of land, the method of distribution being left to the Lieutenant Governor's discretion. In 1797 a bill was passed legalizing all certificates when exchanged for patents, and in 1800 Portland directed that all patents lacking a clergy reserves specification be recalled and proper ones substituted.<sup>2</sup> The 1797 Act, entitled "An Act for Securing the Titles to Land in this Province," provided for commissioners in each district to decide on claims. It was to be in effect only three years, but several renewals were found necessary in order to complete the settlement of all business under this head.

In April of 1796 special regulations for locations on Yonge and Dundas Streets were issued, the object being to induce permanent settlement. Actual residence within one year from the granting of permission to settle, either in person or by a sufficient tenant, was made a condition of assignment. In 1798 the regulations for Yonge Street were made still more stringent; a dwelling house at least sixteen by twenty feet in size was required, with residence within a year as formerly. In the same year five acres of land were to be cleared and fenced, and the street in front of the lot was to be opened for half its breadth.<sup>3</sup> On the day when this

<sup>1</sup>Hamilton to Simcoe, November 22, 1795, page 99.

<sup>2</sup>To Hunter, October 17, Q 287, I, page 193.

<sup>3</sup>Smith Papers, B5, page 226, or Minutes of Council, Land D, page 247.

regulation was formulated, Simcoe renewed the old 1789 regulation whereby magistrates were required to ascertain under oath the names of all United Empire Loyalists, and to register them. This regulation had not been enforced with thoroughness, although registration was necessary to the confirmation of all land certificates. A proclamation was now issued announcing that failure to comply would entail loss of the special privilege of receiving lands free of all expense.<sup>1</sup> This measure did not escape opposition. By some persons it was attributed solely to a desire to restrict exemption from fees; others doubted the power of the Governor in Council to set a termination to a right once acquired. These objections were overruled at the time, but they gave a hint of the difficulties which might be expected to attend any movement toward final adjustment of Loyalist claims.

In April of this year York became the temporary seat of government. Newark never had been intended as the permanent capital; it was too near the American border. In 1791 Simcoe had told the Colonial Secretary that he would select a capital in a place which would unite the rivers falling into Lakes Huron, Ontario, Erie and St. Clair, the object in view being military communication. Flour and sawmills were to be erected at the navigable heads of these rivers, to be let by the Government, and the rentals would swell the revenue from the Crown reserves.<sup>2</sup> Of course, this plan never achieved fulfilment, but after exploring the western part of the province Simcoe chose for the capital a site on the River Thames, where the city of London now stands. The Home Government, however, with an eye to the expense involved in building roads and erecting suitable buildings, ordered him to adopt York as temporary capital, since it was not far from Newark, and possessed both buildings and roads, at least in part. The order was transmitted to the Council, whereupon the Surveyor-General was instructed to report on the number of settlers already at York, the restrictions it might be necessary to impose on future grants within its limits, and any architectural regulations which should accompany them.<sup>3</sup>

York was by no means an ideal spot for the capital. When the roads were bad it was practically isolated from the rest of the province, and it still lacked buildings of adequate size. The work of erecting public buildings, improving roads and building bridges formerly had been assigned to the Rangers, but they had been disbanded before much progress was made. Not until 1797, in Russell's presidency, was it made the permanent capital, and the choice occasioned some difference of opinion between Council members. Chief Justice Elmsley was strongly opposed to the change from Newark, which involved considerable expense to members of the Government.<sup>4</sup> At a later date Robert Gourlay charged some of the latter with making use of foreknowledge of the change for the purpose of indulging in a real estate speculation within the town and along the two great roads leading out from it, although it does not appear that he ever adduced satisfactory proof of the truth of the accusation. It would seem, however, that Russell and Elmsley clashed over the proposed change.

<sup>1</sup>Ontario Archives Report, 1906, page 184.

<sup>2</sup>Simcoe to Dundas, June 2, 1791. Q 278, page 228.

<sup>3</sup>Minutes of Council, Land and State A, page 332. April 6, 1796.

<sup>4</sup>Minutes of Council, State B, page 33.



Russell let it be finally understood that York was to be the permanent capital before the decision of Council to that effect had been approved by the Home Government, an action which Elmsley indignantly termed "an artifice," at the same time intimating that Russell's conduct in other matters was not above suspicion.<sup>1</sup>

The revenue derived from fees on grants was not meeting the expenses involved in assigning and deeding the grants, and the Home Government sought a means of reducing these expenses. Portland reminded Simcoe that in Lower Canada the charges for surveying and setting out grants were paid by the grantees, and intimated that the same thing would be expected in Upper Canada.<sup>2</sup> Simcoe informed the Council, whereupon that body once more constituted itself a Committee on Land Fees, and in due course evolved the following schedule to cover expenses of survey:<sup>3</sup>

On every lot of less than 200 acres .....	20s. 0d.
On every lot of 200 acres .....	26s. 8½d.

These fees were to be added to the usual fees. They were to be paid over by the Provincial Secretary to the Surveyor-General at the end of each quarter. United Empire Loyalists and other privileged persons were not required to pay them, as in the case of ordinary fees also. A proclamation was to be issued announcing the change and setting July 1, 1796, as the date of its inception. It was further suggested that the power of the magistrates in recommending grants of 200-acre lots be suspended, "that the offices may be able to get a little forward in their business." Such a course would confine the land-granting power to the Lieutenant Governor in Council, "there being many Orders of Council for lands of two or three years' standing still unaccommodated." In due course both measures were adopted, the proclamation about fees of survey appearing on the first day of July.<sup>4</sup> An interesting recommendation was elicited by a hint from Portland to the effect that further reservations be made in every 1,000 acres to defray the cost of public improvements. The Committee considered it might be "possibly less offensive to the Loyalists" if, instead, there should be sales of Crown lands at intervals for that purpose.

Another item of considerable moment to the land officers was that of the half fees allowed in the case of grants to privileged persons. In order to lessen their amount the Council ordered the Attorney-General to include all such lands in one deed, so far as practicable. If any persons receiving a considerable quantity of land should request two or more deeds for different portions, the half fee was to be charged to the Government on the largest single quantity, while the petitioners themselves were to pay full fees on the others.<sup>5</sup>

Already considerable work had been done on the two great provincial roads—Yonge street and Dundas street. Next in order came the first steps toward inland waterway construction. As early as 1794 Simcoe had informed Secretary Dundas that a short canal between Lake Ontario and

<sup>1</sup>"I know where to lay my hand on evidence which, if laid before the proper tribunal, would make him repent his behaviour towards me the longest day he has to live."—Elmsley to Smith, March 11, 1798. Smith Papers, B8, pages 40-41.

<sup>2</sup>January 6, 1796. Q 278 A, page 87.

<sup>3</sup>Minutes of Council, June 29, 1796. Land C, pages 291-296.

<sup>4</sup>Ontario Archives, 1906, page 186.

<sup>5</sup>Minutes of Council, Land B, July 9, introductory page.

the Bay of Quinté could be built at small cost. At that time only a portage road crossed the isthmus, along which Simcoe had ordered the land divided into lots of 100 acres, to be granted to actual settlers only, "they keeping a team."<sup>1</sup> Now a reserve of 3,000 acres was made for the purpose of canal construction. Through this reserve runs the existing Murray Canal.

Simcoe's administration ended in July of 1796. In other words, he left Upper Canada just when he might have anticipated some first results from the development of his plans. He had inaugurated a vigorous policy of settlement, but his own enthusiastic personality was necessary to its continuous progress. His faults had been mainly those of over-haste. Robert Gourlay described him as honest and energetic, but "infinitely too hurried and lavish in disposing of the land."<sup>2</sup> To encourage the chief men of the province to bring in settlers, he made a number of large grants, but with very disappointing results. Moreover, the haste and badness of surveys made in his time was to cause trouble later on; ignorant and careless men were employed because land was wanted in a hurry. Nor was he inclined to scrutinize the character of many prospective settlers to whom he gave liberal grants. Often these were army officers, whose previous mode of life rendered them wholly unsuited to business and still less to the solitude and rigours of frontier life. Inevitably many of these men left their lands unimproved, and in time these were to present a very serious obstacle to settlement. On the other hand, Simcoe's paternalism often proved a decided boon to poor or unknown, but capable settlers who could not otherwise have had more than the regulation quantity of lands, for he did not hesitate to grant additional acres to anyone who showed both desire and ability to make use of them.

As has been pointed out, the Home Government was responsible for the initiation of the land system in Upper Canada, and Simcoe appears to have worked faithfully to secure results from it. Experience alone could bring out the weak points in a system which included both reserves and lax settlement requirements. Simcoe never dreamed that social conditions in a new land might differ from those in England, and this circumstance sometimes affected his judgment in land matters. Thus he favoured a high fee on grants, because it kept poor settlers from at once going on the land, and forced them to become labourers, of which there was a great scarcity.<sup>3</sup> But he left the province before any political irritation could result from his policies, and it is almost wholly in his relation to its land and settlement problems that he has incurred either praise or censure.

The question of caveats arose early in Russell's presidency. Evidently the Council had been delayed in land business not a little through the hearing of caveats, usually after much of the business of preparing patents had been completed. So on October 7th the Council ruled<sup>4</sup> that in future the Secretary should not permit caveats to stop the delivery of deeds after they had passed the Great Seal and the offices of the Registrar and Auditor, except by special command of the person administering the government. But in order that means of redress might be open to those

<sup>1</sup>A team of horses. Q 281, I, page 180. December 20.

<sup>2</sup>Statistical Account of Upper Canada, vol. 2, page 367.

<sup>3</sup>To Portland, August 21, 1793. Q 281, II, page 430.

<sup>4</sup>Minutes of Council, October 7, 1796. Land B, page 21.

who judged themselves injured by specific grants to other applicants, a list was to be issued by the Attorney-General on the first day of each month, giving a description of the land orders awaiting his fiat for completion, and unless caveats were lodged in the Secretary's office within a stated time,<sup>1</sup> the deeds were to issue in due course. The Secretary was instructed to notify the Attorney-General of all caveats lodged in his office, and the Clerk of Council was to notify the public that all disputed claims would be heard by the Governor in Council during the yearly sitting of the Legislature. In order to put a check on frivolous caveats, the following table of fees was announced:

Clerk of Council, upon each decision .....	10s. 6d. cy.
Secretary, for receiving and filing .....	1s. 6d.
“ for reporting to the Attorney-General .....	1s. 1d.
“ for receiving and filing decrees of Council .....	1s. 6d.

Early in 1797 Surveyor-General Smith suggested in Council the necessity of immediately sending to his office all information having reference to persons not considered fit objects for His Majesty's bounty in lands. Accordingly a motion was passed instructing the Clerk of Council to transmit a list of such persons without delay, the Surveyor-General at the same time being directed not to locate them upon any recommendation whatsoever.<sup>2</sup> This simple but very necessary regulation not only prevented undesirable persons from acquiring lands, but also saved the land offices a great deal of labour, both in passing the grants for such persons and then later reversing the action. The matter of an “undesirable” who already had obtained a grant came before the Council at a meeting on February 14th, when the affidavit of John Kitson was read. He declared that Ebenezer Hathaway had sold Lot Number 10, in front of the Delaware Township, on the River Thames, to Lewis Smith, of the Genesee County, and that the said Hathaway was in the service of the United States, and had spoken “extremely disrespectfully” of the King's Government. The Council summoned Hathaway to appear in person to show cause why the assignment in his favour for Lot 10 should not be rescinded.<sup>3</sup> At this meeting also an attempt was made to co-ordinate the activities of the various offices concerned in passing grants; the Clerk of Council was ordered to make a return to the Attorney-General of all land granted up to the time of his sending the warrants of survey to the Surveyor-General's office, and also on every Monday morning to send him a return of all the warrants issued from the Council office the preceding week.

The exemption of United Empire Loyalists from land fees appears to have been a constant source of irritation to the Upper Canadian Government. Simcoe had strongly desired to curtail this exemption, and had consulted Chief Justice Powell to that end, asking if it would not be legal to charge them fees on town lots. Powell was of the opinion that no fees could be charged them on any grants bestowed as King's Bounty under a general regulation, but that they should be charged fees on all other grants. He instanced his own case; as a Loyalist he had received 3,000 acres without

<sup>1</sup>One month for the Home district; four months for others.

<sup>2</sup>Minutes of Council, Land B, page 218. February 7, 1797.

<sup>3</sup>Minutes of Council, February 14, 1797. Land B, page 8.



fees, but he had also received 400 acres as an officer of the Crown, for which it was proper that he pay fees.<sup>1</sup> Early in 1797, complaints having been made that the Clerk of Council and the Provincial Secretary upon several occasions had charged fees to Loyalists, the Clerk applied to the Council for instructions, whereupon that body ruled finally that no fees whatsoever be taken on their grants.<sup>2</sup>

Although Haldimand and Dorchester had publicly refused to accept the land fees due to them on patents receiving the Great Seal, Simcoe was by no means averse to his own.<sup>3</sup> Now that he was absent on leave, with his place temporarily filled by Russell, the latter demanded payment of these fees to himself. The Secretary was in a quandary, for Simcoe, when leaving Upper Canada, had instructed him to hold them till further orders. The usual solution was a memorial to the Council, requesting instructions. The Council directed the Secretary to pay over to the Receiver-General all fees received through the privilege of the Great Seal until the question should be referred to the Home Government. Early in 1798 definitive instructions were received, to the effect that during the temporary absence of the Lieutenant-Governor his land fees should be halved with the person administering the Government, the same ruling to apply to salary as well.<sup>4</sup>

In connection with assignments made on old certificates a number of cases of malpractice came to light, where persons already holding lands through other grants had come into possession of such certificates and then had attempted to secure further lands by their means. At a Council meeting in March of 1797 it was decided that in future any unassigned dormant certificate which might be produced at the Surveyor-General's office for assignment should not be filled in until a search had been made to ascertain if other lands previously had been assigned to the applicant. If such were found, then no new grant was to be made, but the certificate was to be filled up with the description of the lot (or one of the lots) already assigned. Public notice was to be given that all claims for land on these old certificates were to be presented to the Lieutenant Governor in Council, but only after having been certified on the face by the Surveyor-General with respect to previous assignment. At another Council meeting a few days later, the first day of August was set as a time limit for the receiving and hearing of claims for the "additional lands" promised to settlers who had improved their first locations, since it had become necessary to know the extent of such lands not yet claimed, and to end the practice permanently.<sup>5</sup> At the request of the Surveyor-General, a sensible and much-needed measure for the speeding up of deeds also was passed, by which certain formal parts of the descriptions were ordered printed and the rest left blank, thus saving considerable routine clerical labour. An index to the finances of the Government as well as the caution of the Land Committee is afforded by an appended instruction to the effect that the expense of such printing should not exceed £25 Halifax currency.<sup>6</sup>

In the first days of the province, with the prospect of unlimited land settlement before them, those officers of the land department who were

<sup>1</sup>Powell to Portland, July 21, 1796. Q 282, II, page 643.

<sup>2</sup>Minutes of Council, January 7, 1797. Land B, page 190.

<sup>3</sup>"I am of a very different opinion."—To Dundas, August 22, 1793. Q 279, II, page 280.

<sup>4</sup>Minutes of Council, State B, page 199.

<sup>5</sup>Minutes of Council March 21, 1797. State B, page 12.

<sup>6</sup>Ibid, page 11. March 14.



entitled to fees on grants had anticipated a very comfortable income indeed from that source. But it was not long before they had reason to change their view. The Attorney registered the first formal complaint. Under the procedure then in practice, fees were received by the Secretary of the Province and by him distributed every six months. The high cost of living was troublesome then as it has been since, and the Attorney-General found it desirable to hasten matters. Accordingly, in the spring of 1797 he petitioned the Council, stating the expense to which he was put in passing privileged grants—some fifteen hundred up to that time—and asking that the Secretary's accounts in future be rendered every three months. He also requested that the half-fees be paid directly to himself, considering it unnecessary that they be paid through the Secretary at all, as it not only delayed payment but also gave that officer additional work. The Council approved these suggestions, and ordered them put into execution.<sup>1</sup>

This matter of insufficient official income was given general expression at this time by a petition of Council to the Home Government. When Chief Justice Elmsley had come to the province he had applied for the usual grant of land as an officer of the Government. By the Royal Instructions, the maximum amount grantable to any one person was 1,200 acres, but a grant of this size was considered scarcely in accordance with the dignity of the office of Justice. Taking Elmsley's case into consideration, the Council requested permission to exceed the 1,200 acre grant, and at the same time a general plea was entered for all members of the Executive Council. It was pointed out that these officers were unable to sustain the dignity of their positions; the Chief Justice's salary, for instance, barely covered his expenses, for goods and labour were "excessively dear." Many merchants had obtained large areas of land by purchase, and so could maintain a better state than those holding important offices. Vacant lands were worth not over two shillings per acre, and hence the Council members should have at least 5,000 acres, the same as field officers.<sup>2</sup> In reply, Portland refused the request on the very grounds on which it had been made—the holding of positions on the Council board. But in consideration of the heavy expenses incurred by the members through the removal of the capital to York, a loss to which their successors could not be exposed, His Majesty empowered him to grant to each member a quantity of lands, inclusive of what already had been granted, sufficient to amount to 6,000 acres. In carrying into effect this permission, however, the grounds for it were clearly to be specified and recorded in the Minutes, "so as not to be drawn into precedent in future."<sup>3</sup> In this way did the Home Government avoid the founding of a dangerous precedent, prevent the Executive Councillors from giving cause for accusations of land aggrandisement through misuse of public office, and yet relieve very considerably the financial straits of its principal public servants in Upper Canada.

In later years, when criticisms of the Government's administration of lands became frequent, one of the most insistent charges was that of favouritism in land grants. Of positive malversation in this respect there is little proof, but undoubtedly full advantage was taken by those in office

<sup>1</sup>Minutes of Council, May 9, 1797. State B, page 42.

<sup>2</sup>Russell to Portland, April 18, 1797. Q 282, II, page 256.

<sup>3</sup>To Russell, November 5, 1798. Q 284, page 173.

of the bounty extended to them as civil officials, as United Empire Loyalists, as military claimants, or in any other capacity specified in the Royal Instructions. Family lands, given to the immediate members of the Loyalist families, very often caused the aggregate to amount to a very considerable figure, and since persons of the official class were supposed to be the most desirable sort of settlers, their grants and additional grants always were on the largest scale permissible. A few examples will serve to illustrate the grounds upon which later criticism largely was based.

Chief Justice Powell himself received 3,000 acres in Hawkesbury, three town lots in Newark, and a farm lot in York. His wife, a Loyalist, received 1,200 acres, and his seven children 1,200 acres each, making an aggregate of over 12,800 acres.<sup>1</sup> His successor, Elmsley, received the 6,000 acres specially allowed by Portland, while his wife received 1,200 acres and his father-in-law the same.<sup>2</sup> Councillors Shaw and Grant both were allowed 1,200 acres for each of their children, "to mark the faithful services of these gentlemen."<sup>3</sup> In Shaw's case the following warrants resulted:

George Shaw .....	1,200 acres
John Shaw .....	1,200 acres
Alexander Shaw .....	1,200 acres
Charles Shaw .....	1,200 acres
Aeneas Shaw .....	1,200 acres
Richard Shaw .....	1,200 acres
Sophia Shaw .....	1,200 acres
Isabella Shaw .....	1,200 acres

Total of .....	9,600 acres
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Of course the Councillor himself received the 6,000 acres due to his office. Less fortunate persons might be pardoned for reflecting that the value placed upon public services seemed to be in direct proportion to the number of one's offspring. The Honourable Baby contrived that each of his brothers, Francis, John, Peter, Duperon and Lewis should receive 1,200 acres,<sup>4</sup> but this not proving sufficient, he asked 1,200 acres for his father's widow, since the father, while living, presumably would have been entitled to 3,000 acres.<sup>5</sup> David William Smith, Richard Cartwright,<sup>6</sup> and many other well-known figures in the early history of the province also were large holders of land. Of the harmfulness of the practice there can be little doubt, at least so far as settlement and progress were concerned; there is good reason to believe that in the main these grants were regarded as being useful for speculative purposes only. On the other hand, these public servants were forced to accept remuneration in lands, because the Home officials were unable or (more probably) unwilling to expend much actual cash in the maintenance of a provincial civil list.

Section 40 of the Royal Instructions to Dorchester as Governor of Upper Canada<sup>7</sup> provided for the reservation in all grants of "coals, and also all mines of gold, silver, copper, tin, iron and lead which shall be discovered upon such lands." But this policy clearly was a hindrance to the

<sup>1</sup>Smith Papers, Vol. A8.

<sup>2</sup>Minutes of Council, June 15, 1797. Land C, page 75.

<sup>3</sup>Smith Papers, Vol. B 11, page 118.

<sup>4</sup>Smith Paper, Vol. B 11, page 139.

<sup>5</sup>Ibid, page 11.

<sup>6</sup>Cartwright, however, considered land an undesirable form of investment, and much of his property was acquired perforce in his trading business.

<sup>7</sup>Constitutional Documents, 1791-1818, page 43.

opening up of the province, for some persons might be tempted to settle in it by the added lure of unknown mineral wealth, while many others would be deterred from exploration of the less known regions when the discovery of economically valuable minerals would mean no personal advantage. Simcoe brought the matter to Portland's attention, and an Additional Instruction dated July 6, 1797, was sent to Governor Prescott in Lower Canada and President Russell in Upper Canada, in which the reservation clause was made applicable to the royal metals only—gold and silver. Power to revert to the original reservation clause in any specific instance was retained as a guard against private monopoly of unusually rich mineral resources.<sup>1</sup>

Of more importance was the question of a policy with regard to the clergy reserves. In 1795 Simcoe had mentioned to Portland the propriety of at once establishing "some principle of rule" to govern the application of the future income from the reserves, his own opinion being that they should not be sold, but leased for as short a term as might be reasonable, at an annual rent.<sup>2</sup> Portland in reply said it would not be proper to define or limit in the most distant degree the appropriation of revenue from such a source, since to do so would be to take away from the Crown the grace of any acts it might pass for the benefit of the province in that connection.<sup>3</sup> Simcoe hastened to explain that he had meant merely that it was of the greatest consequence for the public to understand that the Crown reserves never would be alienated from public purposes, "as otherwise they may at no distant period be a great incentive to revolt"—words curiously prophetic.<sup>4</sup> That phase of the matter thereafter was dropped, but as settlement increased, attention centred on the more practical matter of actually creating the revenue desired.

Acting on a suggestion from the Home Secretary, Russell asked the Chief Justice, Attorney-General and Solicitor-General of the Province for their opinions as to "a competent, respectable and responsible mode of managing the Church and Crown lands."<sup>5</sup> On the replies of these gentlemen the Council based a resolution to the effect that the Crown and clergy reserves be leased at a rack rent for a term of years not to exceed twenty-one and that in seeking lessees preference be given to those persons occupying adjoining lands.<sup>6</sup> In transmitting this resolution to the Home Government, Russell stated as his own opinion that few persons would be anxious to offer acceptable rents for the reserves "before Government shall begin to slacken its hand in granting the waste lands of the Crown gratis." Surveyor-General Smith at once set to work upon a practical method of carrying out this scheme. By the end of 1797 he had one prepared, which was approved, with some slight alterations, by the Home Government. In its amended form the plan was as follows:<sup>7</sup> The lands were to be leased for twenty-one years, the rent to be roughly equal to the land fees charged upon corresponding grants, amounting to a total of about \$100. As an inducement to cultivation, it was proposed that at

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<sup>1</sup>Portland to Russell, Q 278A, page 164.

<sup>2</sup>January 22. Q 281, I, page 220.

<sup>3</sup>May 20, 1795. Q 281, II, page 328.

<sup>4</sup>November 8, 1795. Q 282, I, page 18.

<sup>5</sup>Q 238, page 281.

<sup>6</sup>Minutes of Council, August 14, 1797. State B. page 80.

<sup>7</sup>Ibid, page 141.



the end of seven years the lease be extended another seven years, provided seven acres had been satisfactorily cleared, or proportionate improvements made, the sole expense being a fine of \$7 and a small increase in rent. At the end of fourteen years, if fourteen acres had been cleared, another renewal of lease for seven years might be granted, the fine being \$21 and the rental being a little increased as before. At the end of the lease (a period of forty-two years if thus extended), the improvements should make the land worth about \$4 per acre. The lessee should then be given an extension of twenty-one years, paying a fine of \$40 and an annual rent of 6 per cent. upon the value of the land at this valuation. Thus the prospect of a sixty-three year lease "will not be so disheartening as an unqualified lease of twenty-one years, and will consequently induce them to make more substantial improvements."

Smith's estimates of the probable cash returns from the scheme were most optimistic. Should the clergy lands be taken in lease even to a moderate extent, it would afford ample provision immediately for a clergyman in each district, and eventually in each township. From the clergy reserves alone the receipts for twenty-one years would be \$681,600, with a like sum from the Crown reserves. The business was to be conducted by a standing committee of Council, and Smith himself offered to take charge of the records until sufficient funds came in from leases to pay a special clerk for the purpose, or until other arrangements could be made. At the time Smith made this offer (March 17, 1798), about fifty applications for reserves already had come to his office. The procedure in applying for a lease resembled that used in applying for a grant. Smith worked out the plan in great detail, including even the sets of books necessary for records.

Portland approved this plan with the exception of two items.<sup>1</sup> "In lieu of a rent of money as thereby proposed it will be necessary to substitute a corn rent, or in other words a rent to be regulated by the price of corn, as by that measure the actual value of the rent meant to be reserved, as well at the commencement, as on the termination of each period mentioned in the lease, will be more correctly ascertained than it can be by any given denomination in money." He considered this arrangement would be more equitable for both parties to the bargain. The second point was the renewal of the lease beyond twenty-one years, which he considered unwise. Accordingly, in a final report on the scheme, drawn up on August 12, 1800, the Council somewhat modified the plan. In the matter of term of lease, it was decided to engage for nothing but the first seven years, merely making a verbal intimation that if all were satisfactory a renewal might be granted, at a price to be then decided. The expectation of the tenant thus would be a means of influence over him. As to the corn rent, it was decided to go somewhat farther, and give the tenant an option of either corn or a specified sum of money without regard to the value of grain. It was pointed out that whereas in a country like England corn actually did form a good measure of value, in a new country like Upper Canada the reverse was true, for the price of natural products did not affect the price of imports, and want of capital plus dearness of labour would long continue that state of affairs. But in the way suggested it was thought that this difficulty might be overcome.

<sup>1</sup>To Russell, November 5, 1798. Q 278A, page 159.



The Council further outlined a practical plan for levying and securing a corn rent. The amount should be a little more than the optional cash rent, calculated at the market price at time of lease, the situation of the land to receive proper consideration. Wheat only was to be accepted, and the initial price was set at four shillings currency per bushel. The rate of cash rental outlined in Smith's plan had been five shillings during the first period, fifteen shillings the second period, and twenty-five shillings the third. But on account of the number of applications already received by Council, this was now increased to ten, twenty and thirty shillings respectively, with a corresponding corn rent of three, six and nine bushels. It was to be paid half-yearly, and in each district the town having the best water communication was to be the place of delivery. The local sheriffs were appointed to receive the rents and transmit them to the Receiver-General, a small percentage being allowed them as commission. In keeping the accounts, a distinction was to be maintained between Crown and clergy reserve rentals.

In this form the plan went into effect, being approved early in 1801.<sup>1</sup> Viewing it in the light of later experience, certain weaknesses become obvious. Robert Gourlay summed them completely by pointing out that anyone possessed of the means of renting a reserve could as easily purchase an ordinary lot, "and only an idiot would choose the former."<sup>2</sup> Certainly in a new country where land was plentiful and cheap, and free grants easily obtained, there was small inducement to rent land. The originators of the plan appear mainly to have based their hopes on the likelihood of renting to old settlers in whose vicinity the reserve happened to lie. It was thought that as land values rose, the value of the reserves would rise proportionately. But not for many years could it be expected that cultivation would assume a sufficiently intensive form to warrant such hopes, and the situation was complicated by the presence of large tracts granted to associated companies or to individuals, by lots which had been vacated and allowed to revert to a state of nature, and by lands held for speculation.

In the matter of ordinary land grants, efforts constantly were being made to lessen the percentage of duplicate assignments, and in other ways to effect a more efficient working of the various offices concerned. Early in 1797, on motion of the Chief Justice, the Council ordered its Clerk to reject any petition for land in which it was not distinctly set forth how many lands, if any, already had been received by the applicant, with the authority under which they were obtained. In the case of petitions apparently correct in this respect, he was to examine the records carefully to see if they corroborated the petitioner's statement. If all were satisfactory, he was to certify the same on the back of the petition.<sup>3</sup> Later in the year the Provincial Secretary was reprimanded for not sending in a general statement of his accounts with each officer of the department for patent fees, and at the same time a standing committee of at least two persons was appointed to call on that gentleman, count the number of completed patents remaining in his office, find out how many of these were for privileged persons, and report accordingly. The Auditor-General and Provincial Secretary also were exhorted to greater precision in the

<sup>1</sup>Q 290, I, page 1.

<sup>2</sup>Statistical Account, vol. 2, page 384.

<sup>3</sup>Minutes of Council, January 24, 1797. State B, page 4.

routine conduct of their offices when land matters were in process. In September the standing committee reported as follows:<sup>1</sup>

Number of deeds in Secretary's office, sealed and signed by Simcoe and Russell .....	583
Number of deeds docketed by the Auditor-General .....	1,073
Hence number of deeds issued .....	1,656
Up to August, 1796, the Secretary had accounted for United Empire Loyalist grants .....	141
Up to June, 1797 .....	154
Full fee grants reported to President Russell .....	99
Grants issued since then .....	50
Total of .....	490

The 1,073 deeds docketed in the Auditor-General's office were distributed as follows:<sup>2</sup>

Home district .....	634
Midland district .....	79
Eastern district .....	247
Western district .....	113

On July 1 the Council restricted the granting of family lands by decreeing that surveyors were not to deduct the allowance of fifty acres for wife and each child in a family from the lands granted under any other authority, unless the total exceeded 1,200 acres. But this was not to preclude the Council from extending the bounty of family lands in specific instances.<sup>3</sup> A little later it was ordered that no town lots be granted unless the applicant pay for the grant. Still later, it having been reported that several persons to whom town lots in York had been ordered had sold out instead of residing on them as they had engaged to do, it was further resolved that the selling a town lot before issuance of the deed, unless by special permission of the Council, should be deemed a forfeiture of the location.<sup>4</sup> A restriction also was placed on the acquisition of lands by claims through relationship to persons deceased, these to be allowed only in the case of persons actually settled in the province when the claim was made out, or else actually settling within one year of that time. The Attorney-General was instructed at this time not to include in one deed lands lying in more than one township, because of the inconvenience in passing such deeds and the difficulty in registering them. The specification for the clergy reserves might run to great length in such deeds.<sup>5</sup>

In May of 1796 a proclamation had been issued declaring certain grants of townships null and void because of failure to comply with the conditions of settlement.<sup>6</sup> Prior to that event, in August of 1795, the Surveyor-General had reported to the Council that no settlers as yet had been placed on the townships of Clarke or Cramahe by the persons to whom they had been granted. The Council forthwith rescinded the grants and threw open the townships. The 1796 proclamation had included the

<sup>1</sup>Minutes of Council, State B, page 88.

<sup>2</sup>Smith Papers, B 9, page 193.

<sup>3</sup>Minutes of Council, Land C, page 111.

<sup>4</sup>Minutes of Council, December 20, 1797. State B, page 93.

<sup>5</sup>Ibid, page 86.

<sup>6</sup>Ontario Archives, 1906, page 185.

lands of the unfortunate Willcocks. As a result of it, the Surveyor-General's plan of surveys to be made in the following autumn and winter included the completion of surveys on five forfeited townships in the Eastern district, three in the Midland, one in the Home, and one in the Western.<sup>1</sup> Simcoe had begun to foresee the ultimate failure of all grants of this sort.<sup>2</sup> It is interesting to note that conditions in Lower Canada in this matter of township grants to associated companies had reached much the same pass.<sup>3</sup>

In August of 1797 Surveyor-General Smith laid before the Council a report on grants of townships, and as a result the Council submitted to the president, a number of comments. First they drew attention to the fact that persons obtaining such grants rarely understood in full the conditions attaching to them. Many appeared to think that after settling forty families in a township, on 200-acre lots, the rest of the land was their own. Others, although they understood their obligation to settle two hundred families on 200-acre lots, yet considered themselves free to sell out at any time. Still others believed that after settling the two hundred families they in some fashion could acquire personal holdings beyond the 1,200 acres maximum. The Council members were fully satisfied that there was no foundation whatsoever for any of these impressions; on the contrary, they were convinced that in all such grants the nominee was entitled only to 1,200 acres himself, with the same quantity for each of his three principal associates. Of several nominees examined by the Council, none could state any grounds on which more was expected, save general report and hearsay. The original principles upon which the township grants were based had never been lost sight of, nor had there ever been any idea of giving more than 200 acres to each settler. Whether all the names handed in by the leaders really were those of constituents, or whether those leaders who did not hand in the names of their constituents were really able and desirous to settle the land—these were different matters. Having considered the situation carefully, the Council unanimously recommended: that all appropriations for townships or other tracts of land heretofore made in Upper Canada be rescinded immediately, and such lands thrown open to other applicants: that all persons really settled in any township by the nominee be confirmed to the amount of 200 acres only: that 1,200 acres, including former grants (except of military lands), be granted to each of the four principal nominees, but those who happened to be nominees in more than one township should not receive this donation more than once: that the unsurveyed tracts be surveyed and located as soon as possible.<sup>4</sup>

Acting on these suggestions, Russell promulgated an Order-in-Council abolishing township grants. As an additional precaution, the nominees were strictly forbidden to locate any new settlers in the province, as in future none of their recommendations would receive consideration.<sup>5</sup>

In this fashion disappeared one of the chief difficulties in the evolving of a successful land policy for Upper Canada. Many other difficulties remained, but the passing of the township grant to associated companies,

<sup>1</sup>Minutes of Council, Land B, page 1.

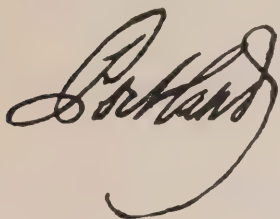

<sup>2</sup>"I apprehend that ultimately this will be the case of most of the land promised in townships."—To Portland, July 20. Q 282, II, page 508.

<sup>3</sup>Q 80, I, page 189. Prescott's letter.

<sup>4</sup>Minutes of Council, August 12, 1797. State B, page 63.

<sup>5</sup>Minutes of Council, Land C, page 118.

with its inevitable temptation to foolish land speculation, simplified the problem much. In future the failure of a small number of associated grantees to fulfil the conditions of settlement would not necessarily block the progress of a whole district. There would now be opportunity, because of the much larger number of grantees over a given area, for the successes of some to offset the failures of others.

A facsimile of the signature of the Duke of Portland, written in a cursive script. The signature is highly stylized, with a large, sweeping initial 'P' and a long, trailing flourish that extends downwards and to the right.A facsimile of the signature of J. G. Simcoe, written in a cursive script. The signature is more compact than the one to its left, with a prominent initial 'J' and a series of connected loops for the rest of the name.A facsimile of the signature of Peter Russell, written in a cursive script. The signature is bold and clear, with a large initial 'P' and a distinct, rounded flourish at the end.

Facsimiles of the signatures of the Duke of Portland; J. G. Simcoe, Lieutenant Governor of Upper Canada, and the Hon. Peter Russell, Administrator of the Government of Upper Canada.



## CHAPTER IV.

### THE PERIOD OF EXECUTIVE FREEDOM.

By 1797 Upper Canada was acquiring a more settled appearance. The stream of Loyalist immigration had almost ceased, but a regular influx of American and British settlers was taking its place. The Government was firmly fixed at York; two concession lines had been run on either side of Yonge street, and the province bid fair soon to support a prosperous trade in lands.

The procedure in acquiring a grant also had become more regular and systematic, and fairly typical of the methods used while the system of free grants remained in vogue. Each petition for land was referred to a committee of the Executive Council, and upon its recommendation usually was acceded to by the Lieutenant Governor or person administering the government. The quantity ordered was endorsed on the back of the petition under his signature. Then the order was entered in the Minute Book of Council, and upon application by the petitioner a warrant of survey was made out by the Clerk of Council. This was presented to the Surveyor-General, who thereupon located the grant as nearly consonant with the applicant's wish as possible. A description of the location was entered in the office record book in presence of the applicant, but only a memorandum of it was given him at the time, lest he try to sell it before the patent issued.

The description was taken in its due turn with others already in the office and sent, with an authenticated copy of the Order in Council, to the Attorney-General. That officer then proceeded to draw up the deed, which, upon completion, he transmitted with his fiat for its issuance, to the Secretary of the province, who affixed the Great Seal. After being signed by the Lieutenant Governor the deed was docketed in the office of the Auditor-General, and was sent from thence to the Registry Office to be registered. The Secretary, in due course, announced in *The Gazette* that certain deeds lay in his office ready to be delivered to the owners or their attorneys upon application. The fees charged by the various offices concerned in passing a deed were according to an authorized table, and were paid in by the applicant to the Secretary of the province upon receipt of the deed. The Secretary, in turn, transmitted them to the Receiver-General, afterwards distributing to the officers concerned their respective shares by warrant on the Receiver-General. The half fees allowed on privileged grants likewise were distributed, after having passed an audit of the Executive Council, but were paid directly to each officer by the Receiver-General instead of passing through the Secretary's hands.

There were three varieties of stipendiary payment to land officers—salary, salary and fees, or fees alone. Of course, both salaries and fees varied from time to time, but a few typical examples will serve to illustrate their application. The Lieutenant Governor at first received only fees on land grants, on the precedent set by Simcoe, but this arrange-

ment proved unsatisfactory, partly because of the arrears into which the fees were liable to fall, and partly because of the dissatisfaction and jealousy occasioned with other Government officers. In 1810 Gore asked the Home Government to substitute a fixed income for "that unpleasant part of my emolument,"<sup>1</sup> and in 1812 such an arrangement was approved, the Lieutenant Governor receiving £1,000 yearly in lieu of fees.<sup>2</sup> Thenceforth that portion of the land fees was paid into a fund called "The King's Rights," duly accounted for by the Receiver-General to the Lords Commissioners of His Majesty's Treasury.<sup>3</sup> The Surveyor-General of Lands had a salary attached to his post, as well as fees, which eventually was set at the same figure as for the corresponding office in Lower Canada—£300 per annum. Usually the fees amounted to a little more than the salary. The Surveyor-General of Woods and Forests received a salary of £200 yearly. The Auditor-General received only fees, roughly averaging £100 per annum. The Attorney-General, Registrar, and Clerk of Council received both salary and fees; their duties, of course, extended to other than land matters. It was not unusual for individual officers to administer more than one office, and thus many small salaries were eked out. But it cannot be said that the land officers were overpaid for their services, which were important and sometimes arduous.

The one office which dealt solely with land matters was that of the Surveyor-General. Under his direction were a senior surveyor, a senior draughtsman, a number of assistants and clerks, and the district surveyors. Their duties were manifold. They prepared and issued instructions for such surveys as might be directed by the Lieutenant Governor in Council. They received and entered the returns from these surveys, testing their accuracy when required. They examined the charges incurred and prepared the accounts for audit. They reported on petitions sent in to the Lieutenant Governor and Council, and then entered the reports. They prepared annually a return of the lands described for patent, as well as the return required by the District Treasurers for levying assessments. They entered the certificates of the commanding officers regarding military claimants, and also the authorities for Loyalist and special claims. They examined the claims of all applicants for lands, showed the plans, and entered the locations thereon, posting them against the respective authorities. They prepared descriptions for patents, copied and entered them. They prepared any returns requested by the Legislature, and regularly made to the Lieutenant Governor returns of vacant and grantable lands. To these duties in time were added others connected with land corporations, such as the Canada Company, or with new offices, such as that of Commissioner of Crown Lands.

A chief duty of the Surveyor-General of Woods and Forests may be inferred from that clause of the Royal Instructions which called for the reservation, in land grants, of all timber fit for the use of the Royal Navy. He was responsible for the enforcement of such reservations, and in connection was required to report annually on the timber of all sorts which he found while in the field. His other duties were connected mainly with the timber industry of the province. In May of each year

<sup>1</sup>To Liverpool, May 4. Q 313, I, page 263.

<sup>2</sup>Lords of the Treasury to Gore, June 1. Q 316, page 223.

<sup>3</sup>Q 335, II, page 402.

he reported to the Lieutenant Governor the districts in which it appeared advisable to grant licenses for the cutting of ordinary wood, specifying the quantities fit to cut, and the amount which should be granted under license during the ensuing season. It also was his duty to issue the licenses, subject to the approval of the Lieutenant Governor in Council. These licenses were sold at public auction; the quantity covered by each was limited to 2,000 feet, for which a minimum price was set.<sup>1</sup> No timber might be cut without a license, and even on license it must be taken out within nine months, or the privilege would be withdrawn. District measurers of timber were appointed by the Surveyor-General of Woods to certify the quantity cut under each license. After a sale he furnished the Auditor-General with a return of all licenses sold.

The first Surveyor-General of Woods for Upper Canada was Robert Shireff, founder of the Ottawa timber trade. The appointment was irregular. In return for his services in pointing out to the British Government the possibilities of the timber trade as a source of Crown revenue, Lord Dalhousie appointed him collector of Crown dues on timber licenses in Lower Canada, and, later on, again through Dalhousie's recommendation, he was assigned to a similar post in Upper Canada. This he held until 1827, when Peter Robinson was formally commissioned Surveyor-General of Woods and Forests to succeed him.

The duties of the Receiver-General in connection with lands were chiefly of a financial nature. He handled all monies which were received in the form of fees on land. They were entered in a set of daybooks and ledgers, and receipted on the location ticket or other authority exhibited by the applicant. At first the accounts were audited merely by the Council sitting as a Board of Audit, and as the Receiver-General invariably was one of the Council, it transpired that he assisted in the auditing of his own accounts. Later on, however, an Inspector-General of Accounts was appointed, to whom every six months the Receiver-General made a return of all public receipts, afterwards entering them in the various public accounts. These were audited by the Council half-yearly, and by the Commissioners of the Board of Audit in Britain annually. In actual practice, most of the Council's auditing duties eventually were left to the Inspector-General, and the Council merely decided on questionable items.

Details of the workings of the various offices will appear as the history of their progress is related. In this connection occasional mention of the difficulties encountered by the officers in the routine discharge of their duties will be of service. Perhaps the most puzzling were those of attempted impersonation of rightful claimants, or of duplicate applications cleverly disguised to prevent discovery. A typical instance of the latter kind cropped up early in 1797. Surveyor-General Smith had been directed by the President in Council to locate a man named Jacob Misner on a farm lot in the vicinity of Long Point. In the course of the usual search for any evidence of a prior grant it was found that a man by the name of Jacob Miesner had claimed a 200-acre assignment in Crowland, on a land board certificate, in 1795. Presuming this to be the same person, although the orthography of the surname differed slightly, Smith refused

<sup>1</sup>For the upset prices per 1,000 feet see page 30 of the 1840 Report.



to locate him until he should present, conjointly with some other person, a certified statement to the effect that he was not the Jacob Miesner who already had received a grant. In due course such a statement was presented, attested by one John Misner, Senior, and a grant was made out in the usual way. Not long afterwards the land board certificate was sent to Smith to describe; this also was completed. But Smith was suspicious. He wrote letters to both persons to know how they were distinguished, and, receiving no answer, he began to make enquiries. Eventually he found good reason to believe they were one and the same person, which fact he reported to the Council. That body solved the difficulty by giving him authority to summon Jacob Misner and Jacob Miesner to appear in person on the same day at his office, there to substantiate their respective claims to the lots in question, upon pain of forfeiture.<sup>1</sup>

Often situations of a nature less serious and yet sufficiently annoying were experienced by the Council. Thus, later in the same year, a settler named Angus Macdonell presented a petition in which he peremptorily demanded the deliverance of his deed for a lot in Newark, and complained that the Secretary was charging him fees, although he was a Loyalist. But the Council stood very much upon its dignity, and ruled that the petition might be attended to "when the petitioner learns to address this Board with the respect he ought to pay to the Executive Government of this province."<sup>2</sup> Just before this case had come up, one of a different sort had been discussed. A man named Tredwell had put in a claim for lands on the Grand or Ottawa River. But another person by name of Fortune objected to the grant on the ground that "the said Tredwell is not a Christian, denying Christ, and preferring the works of Tom Paine to the Holy Bible . . . and that it would in consequence cause sore displeasure and loss to the true servants of the Crown now residing on the Grand or Ottawa River (whose feelings are exceedingly hurt by his ungodly expressions) should the said Tredwell possess the lands." The Council called Fortune before them to give evidence, when he further declared that he had heard Tredwell "speak very much in favour of the American Government and disrespectfully of the British Government, and endeavoured to turn the Bible into ridicule." In that day, of course, such charges were considered quite serious, and the Council gravely decided that Tredwell's religious and political principles did not appear to be such as to entitle him to further favour.<sup>3</sup>

Occasionally the shoe pinched the Government foot. A case in point occurred about the same time as those just related. A land claimant named Holloway was refused confirmation in his grant by Ridout, senior clerk in the office of the Surveyor-General. Evidently Holloway made a fuss, for the matter came up before President Russell, who informed Surveyor-General Smith that Ridout had acted improperly in the affair. It appeared, from two letters which Holloway produced, that Ridout had had that gentleman's name placed upon the lot on condition that it should be sold later on to himself for twenty-five dollars. Russell asked Smith to caution Ridout. At the same time he admitted that Holloway was a rascal. Smith did so, at the same time claiming that he never delegated

<sup>1</sup>Minutes of Council, Land C, page 46. May 13, 1797.

<sup>2</sup>Ibid, page 191. August 28, 1797.

<sup>3</sup>Minutes of Council, July 7 and 9, Land D, pages 178 and 184.



to Ridout such powers of confirmation, and hence the latter could not have acted as was charged. The final result was that Holloway gave up all claim to the lot, but took another elsewhere, while Mrs. Ridout got the original lot.<sup>1</sup> The precise details of the transaction probably will never be known.

Occasionally there was criticism of a lively sort even within the official circle. Early in 1798 the Honourable Robert Hamilton, Legislative Councillor, produced before the Executive Council some land warrants for which he desired deeds. Chief Justice Elmsley, for reasons best known to himself, strenuously opposed the granting of these, whereupon Hamilton became angry and scored the Land Department for slowness in issuing patents. He claimed that although four years previously he had given in the certificate for the land on which his house stood, no patent as yet had issued.<sup>2</sup> He even hinted at drawing the attention of the Legislature to it, a hint as to the growing influence of that body.

Meanwhile the Government of Lower Canada, under Lieutenant-Governor Prescott, had been endeavouring to formulate a plan for the disposal of its public lands, of a sort which would bring to the state a more satisfactory revenue. A tentative plan was drawn up and despatched to Home Secretary Portland, who handed it on to Russell in July of 1797 for an opinion on the desirability of its adoption in Upper Canada. This plan was based on two suggestions by Portland: the levying of an additional fee to be used in defraying public expenses, and the effecting of some regular plan by which Church and Crown reserves might soonest be rendered profitable. As has been related, the latter suggestion resulted in the adoption for Upper Canada of D. W. Smith's plan for leasing the reserves. There remains the plan for an additional fee.

Prescott mentioned in his draft of the plan "the perplexity in which the business is at present involved." Before he came to Lower Canada there were over a thousand applications for land reported upon by Council, but of these only one grant had been completed. This state of affairs, so much worse than in Upper Canada, was possibly mainly because of the relatively greater age and population of the lower province. To the adoption of an additional fee he could see no objection. Higher fees, he thought, resulted in a more respectable class of settlers, and after a few million acres had been granted the fees might again be raised. Personally he preferred a plan by which money would be raised through occasional sales of the Crown lands, because much larger sums could be raised in that way. This suggestion is decidedly interesting in view of later developments in the history of the Crown lands of both provinces.

The details of the additional-fee were as follows:<sup>3</sup> Each grantee was to be allowed land up to 1,200 acres, as formerly, and applicants might petition either singly or in associated companies. But the fees were to be £25 per thousand acres, or sixpence per acre. Loyalist and military claimants were to be charged only half that sum, or £12 10s. per thousand acres. The officers concerned in passing the grants should receive £6 5s. per thousand acres, to be deducted from the additional amount of fees received. The grantee was to be given rights over all mines save those

<sup>1</sup>Smith Papers, B 9, page 177.

<sup>2</sup>Ibid., B 8, page 38. Elmsley to Smith, March 4, 1798.

<sup>3</sup>Q 78, page 188.

of gold and silver. The money arising from all grants, after deducting the officers' fees, was to be used in defraying the civil expenditure of the province.

Russell feared for the success of the plan. He pointed out that some hundred thousand acres already had been given to the Loyalists, who, with their children, were exempt from fees. He suggested that it might be wise to order payment of half the fees when the warrant of survey was issued, as a check upon speculators who did not mean to settle. Meanwhile Portland had written announcing that the land regulations in Upper Canada were to be the same as in Lower Canada, in general accordance with Prescott's plan. The details of this plan, as finally adopted after consultation between the two provinces, were to be reported to the Home Government. In accordance with these instructions correspondence with Prescott was begun, and Russell, in Council, considered "very maturely" the various features of the scheme. Petitions for land were answered as usual, but the warrants for survey were suspended until the new system should be installed. But Prescott was so slow in writing that the Council feared business might accumulate to such an extent as to swamp the offices when once warrants began to issue, so the suspension was removed and the additional fees were charged the same as if definite instructions had been received. The receipts from these fees, however, were left in the hands of the Receiver-General until the Home Government should advise how they were to be applied.<sup>1</sup>

After careful consideration of the various articles of the plan, the Council expunged that relating to Loyalists and military claimants as being incompatible with the governmental promise to those persons, at least so far as applied to grants which were strictly Government bounty. All other grants were to be subject to fees. A further amendment shows that the lesson of the associated companies had not been lost. It was pointed out that since there was not a very great quantity of land still to be disposed of, and "having fortunately got rid of the scheme for settling the waste lands by appropriating large tracts to associated companies, which a very fair trial convinced us was injurious to the province,"<sup>2</sup> it would be unwise to recur to that system; hence it was agreed that that particular article be suspended until permission to reject it finally should be obtained from the Home Government. The additional fee was set at £5 for grants of 200 acres and under, and sixpence per acre for all grants over 200 acres, exclusive of survey fees.<sup>3</sup> The full fees were to be paid directly to the officers concerned in passing the grants, while the half fees on privileged grants were to be paid by warrant on the Receiver-General as customary, and charged against the additional amount of fees in his hands. Russell's suggestion as to requiring payment of half the fees upon issuance of the warrant of survey was adopted, and the balance was declared due upon issuance of the patent.

A description of the arrangements for carrying out these decisions will serve further to illustrate the business methods of the land offices. The Clerk of Council was provided with blank warrants of survey, having at the top a printed form of certificate for the Receiver-General to sign.

<sup>1</sup>Minutes of Council, June 25, 1798. State B, page 171.

<sup>2</sup>Ibid, page 140.

<sup>3</sup>Ibid, pages 150 and 171.

Each certificate was numbered as issued, and the Surveyor-General was forbidden to give a description on any warrant not signed in this way. In making out a description, the Surveyor-General gave it the same number as the corresponding warrant of survey, and when it went to the Attorney-General that officer gave to his fiat the same number. When finally the patent was issued by the Provincial Secretary it, too, bore the same number. This arrangement simplified the work of back reference. The Secretary was provided with a regular form for the entering of fees, and each half year had to produce for the audit of Council a statement of his accounts. He debited himself with the fees received, and credited himself with the fees paid out to the land officers. The Receiver-General was the recipient of any balance remaining in favour of the public, and was required to give a half-yearly account of the amount. The expense of survey continued to be paid by the grantee direct to the Receiver-General when the warrant of survey was presented, half-yearly accounts being required in the usual way. In the case of Loyalist or military claimants, the warrants were not numbered, but were marked U.E. or M.C., and entered alphabetically. At the end of the alphabet the letters were repeated with numerals, as A2, B2, etc.

In consequence of a resolution in Council, passed on October 25, 1798, a proclamation setting forth the new regulations was ordered,<sup>1</sup> and appeared in due course. The fees of survey were set at £1 for town lots and other grants not over 100 acres, £1 7s. 6d. for grants over 100 acres but not more than 200 acres, and £1 7s. 6d. per 200 acres for all other quantities. When the excess on grants of over 200 acres exceeded 100 acres, 20 shillings was charged for it. The distribution of fees to the land officers under the new regulations per thousand acres was as follows:<sup>2</sup>

	£	s.	d.
To the Governor .....	1	1	0
To the Secretary of the province .....	12	6	
To the Register .....	12	6	
To the Auditor-General .....	7	6	
To the Clerk of Council .....	12	6	
To the Surveyor-General .....	1	7	6
To the Surveyor-General of Woods .....	5	0	
To the Attorney-General .....	12	6	
	£5	11	0

Add to these the fee on account of the public services of the province, amounting to £19 9s., and a total of £25 is reached, in accordance with the regulations. As the land officers' fees on small grants in many cases would be reduced to less than the value of the paper and wax of the patents, it was judged advisable to charge the full fee of £5 11s. on the patents for each town lot, and order the whole of that fee to be distributed among the land officers.<sup>3</sup> Portland, however, did not approve this fee, pointing out that it would amount to more than the regulation rate of sixpence per acre, and advised in its stead a reasonable amount of compensation to the various officers. But the Council defended its action on

<sup>1</sup>Minutes of Council, State B, page 214.

<sup>2</sup>Q 286, I, page 20.

<sup>3</sup>Russell to Portland, November 3, 1798. Q 286, I, page 12.



the ground of reduced fees and the small demand for town lots, and Portland, in 1800, permitted the higher rate to stand.<sup>1</sup>

In the course of the year 1798 the problem of Loyalist grants received intermittent attention. In March the list of certified Loyalists in the Western district was examined, and as it appeared there were several names on it which should not be, it was sent back for revision. As it was reported that a number of persons had "crept onto the U.E. list surreptitiously," and others had been put on by mistake, Surveyor-General Smith proposed that steps be taken for purging the list, incidentally saving the Government some revenue in fees.<sup>2</sup> His own plan was the imposition of oaths on all suspected persons, one kind for original Loyalists and one for their children. Any persons found to be not U.E. or M.C. who had received Orders in Council since July 1, 1796, but had not yet received deeds and paid the survey expenses, should be called upon to pay over the full fees and receive their deeds. This suggestion was approved by the Council. On May 23rd the Clerk of Council was ordered to submit to the Council's inspection each day the list of U.E. names received by him in order that any names deemed improper to add thereto might be expunged. Such names were to be sent each day to the Provincial Secretary for his information, and that officer was instructed not to consider discharged British or German soldiers, discharged seamen, or artificers of the army or navy as being proper Loyalists; such were to be classed as military claimants. The reason given for this measure was that they appeared to have been "indiscriminately admitted" to the U.E. list.<sup>3</sup>

In July a limited restriction was placed upon the granting of land free of expense to privileged persons. In future these were to pay fees when non-residents of the province. In the case of resident Loyalists, the privilege of free grants was not to extend beyond the first generation. It was pointed out that its indefinite extension to all descendants would involve endless expense, and would give to later generations a much more valuable gift than to the original Loyalists for whom the favour had been intended. Really this measure was unnecessary, because the provision as outlined by the Home Government was not intended to extend beyond the first generation; that fact later was pointed out by the Home Secretary. The expectation of an indefinite series of free grants originated merely in rumour and ignorance of the precise intention of the Government, and never should have been accepted, even by implication, by the Executive Council. Indeed, rumours of many kinds constantly were agitating the minds of Loyalist claimants, the most persistent being to the effect that they would have to pay fees on their grants. Accordingly the Council issued a proclamation reassuring the first Loyalists of the continuance of grants free of all expense to themselves, their sons and their daughters.

A better subdivision of the province had become necessary, and an Act of Legislature passed in this year brought about the required changes.<sup>4</sup> When the former division into districts and counties had been made, little was known of the province save the Saint Lawrence and the Great Lakes. Since then the interior had been explored and opened in part. The country

<sup>1</sup>Q 286, I, page 56, and Minutes of Council, State C, page 118.

<sup>2</sup>Minutes of Council, State B, page 113. March 7, 1798.

<sup>3</sup>Minutes of Council, May 23, 1798. State B, page 150.

<sup>4</sup>Constitutional Documents, 1791-1818, page 222.



Proclamation  
 Read in Council 15<sup>th</sup> Decr.  
 1798.

Mr President Russell's  
 Proclamation

of the 13<sup>th</sup> of Decemr 1798.  
 respecting the first day about  
 & their Children

Entered in Clerk Book B  
 Page 305, 6, 7. —

# Proclamation

Peter Russell Esq<sup>r</sup>. President  
Administering the Government of  
Upper Canada

Whereas by Letters received from Her Grace the Duke of Portland One of His Majesty's Principal Secretaries of State since the issuing the Proclamation of the Thirty first of October last, it appears that, in consequence of a Representation made by the Executive Government of this Province to His Majesty's Ministers on the Exemption of U. E. Loyalists and their Children from every Expence attending the Grants of Land made or to be made to them, His Majesty has been graciously pleased to signify His Royal Pleasure that the first Loyalists and their Sons and Daughters shall continue to receive His Majesty's Bounty of two hundred Acres each as heretofore free from any expence whatever - and that it is to be understood that this Mark of the Royal Munificence is exclusively Confined to those Loyalists only who were actually residents in the Province on or before the Twenty eighth of July - last.

Be it therefore Known that notwithstanding what has been declared to the contrary in the Proclamation aforesaid All Loyalists coming within the above description whose names have been enrolled upon the U. E. Lists previous to the Date of this present Proclamation and their Sons and Daughters  
when

When of age or married, to whom the Kings Bounty in  
lands has not been already extended may continue to consider  
themselves entitled to receive from this Government two hundred  
Acres of Land free from the Payment of Fees and all other  
Charges, but that, except to the extent allowed by His  
Majestys Instructions, neither U. E. Loyalists nor their  
Children can be considered as exempted from the Standing  
Fees, it having been Ordered that they shall be annexed  
to every further grant of Land, to them as well as to  
Others Be it enacted what it may

Given under my hand and Seal at  
Arms in Council at York this Fifteenth  
day of December in the Thirty ninth Year of  
His Majestys Reign and in the Year of Our  
Lord One thousand Seven hundred and Ninety  
Eight

Peter Russell  
President of the

By Command of The President  
in Council

John Brame  
Clerk of the Council







as a whole now appeared to fall into portions grouped about certain central points, and it was thought wise to effect the re-division while the newer parts as yet were only slightly settled and the change was easy. So the northern parts of the eastern districts were divided into counties, because the Ottawa River gave a highway, and it was presumed that "county towns" would soon grow up. In the Midland district the islands which composed the County of Ontario were divided between the counties on the mainland as a matter of convenience. In the Home district the removal of the Government to York, and the increasing population of Lincoln County, necessitated the erection of a separate district of Niagara. Similarly, rapid settlement along the Thames River caused a division of the Western district into two. As a result of the whole redistribution it was hoped that no settler in the province would be at a greater distance than an easy day's journey from the local centre to which the discharge of his public duties might call him.<sup>1</sup> A corollary to this Act was one which had been passed in June of the same year, providing for the establishment on a permanent footing of the boundary lines of the various townships.<sup>2</sup>

A minor change in fee procedure had been inaugurated early in 1798, by which the fees of survey were paid directly to the Surveyor-General instead of to the Provincial Secretary, as formerly.<sup>3</sup> In that summer Surveyor-General Smith petitioned the Council for some remuneration for the trouble and risk attending their collection, whereupon he was granted a two and a half percentage upon the total amount received.<sup>4</sup> In November a complaint was registered by Attorney-General White respecting his own emoluments of office. Like others of the land officers, he had been under the impression that the great quantity of waste lands to be granted would offset the smallness of his salary. But on many grants, he claimed, the fee did not cover his expense in completing them, and on none of them was he adequately remunerated for his time or for the expense of clerks to perform the work. Nor were his duties in connection with land grants as simple as he had imagined. "In this branch of my office I have had to wade through unspeakable disorder, confusion and trouble—fresh trouble, confusion and disorder are daily arising."<sup>5</sup> Under the new regulations his fee on 200-acre grants amounted to something over sixpence. He explained to the Council that he *could* make a living by taking bribes, "but His Majesty's confidence will not be misplaced in a man who can dig his own potatoes and cut firewood . . . however incompatible with my station or education." The matter of salaries, however, rested with the Home Government, and the Council could do nothing other than forward the petition to London, with a recommendation that it be granted.

President Russell found it necessary to assert the prerogatives of his office at a Council meeting in June of this year. It happened that the Clerk had issued some warrants for survey upon the recommendation of the Committee of Council before obtaining the President's confirmation.

<sup>1</sup>Remarks on the Act, by Elmsley. Q 285, page 85.

<sup>2</sup>See Statutes of Upper Canada.

<sup>3</sup>Minutes of Council, February 12, 1798. State B, page 111.

<sup>4</sup>Ibid, page 196.

<sup>5</sup>White to King, November 15, 1798. Q 286, II, page 439.

Were this practice to continue, deeds might issue of which he did not approve. Accordingly it was ordered that no petition be considered as finally determined until the Lieutenant Governor or the person administering the government had revised and confirmed it.<sup>1</sup> Later in the same year there was presented in Council a petition which is interesting as showing the military motives which underlay the formation of certain settlements. A discharged Ranger of Etobicoke Township, west of York, sold his grant to a man named Richardson before receiving a deed, whereupon the latter petitioned to be confirmed in the grant. A special recommendation in the petitioner's favour caused the Council to comply with the request, but in so doing it was expressly stated that no precedent was to be formed thereby, because if the Rangers were permitted to sell their grants before receiving deeds, the purpose for which they had been given would be defeated, said purpose being to encourage the soldiers of that corps in forming a military settlement in Etobicoke to cover the capital from inroads by Indians on that side.<sup>2</sup>

With the beginning of the year 1799 the question of fees again came up for settlement. It appeared that a good many persons had taken out warrants for survey without paying the fees. On January 5th it was decided in Council that such persons must pay the fees within three months or lose their grants, and in future all fees were to be paid within one month, also under pain of forfeiture. A week later additional pressure was brought to bear in the form of instructions to the Land Department directing its officers to expedite the deeds of such grantees as the Surveyor-General reported to have paid the fees of survey, in preference to others who were liable, but had not paid.<sup>3</sup> The matter of grants which had been lying for a year or more in the Secretary's office ready to be issued on payment of the full fees was more serious. An abstract of these grants gave them as 769, on which a total of over £2,496 was due in fees. This abstract was embodied in a report and referred to the serious consideration of a Committee of Council, that they might devise some means of stirring up the grantees to take out their titles. On July 18th the land offices again petitioned Russell to take action of some sort, and there the matter rested for a time.

About this time Attorney-General White renewed his former contest with Secretary Jarvis over the engrossing of patents, though to a different tune. The result of the first dispute had been the retention by White of the right of perfecting the deeds, but he soon found out that there was more labour and trouble than money involved in it. His claim now was to the effect that although it was his duty to see that the grantee received a legal title, yet it was not within his province actually to draft the deed. The Council sent a copy of the petition to Jarvis, with a request for his reasons why it should not be granted. At a meeting in April the matter was further considered. As the confirming of deeds had been stopped by the quarrel, the Council adopted a resolution to the effect that, without making an immediate final decision, the business was to be carried on as formerly. The final adjustment was made on July 13th,<sup>4</sup> when the

<sup>1</sup>Minutes of Council, State B, page 169. June 21, 1798.

<sup>2</sup>Minutes of Council, Land D, page 233.

<sup>3</sup>Ibid, page 257. January 12.

<sup>4</sup>Minutes of Council, State B, page 401.

Council ruled that it was the duty of the Attorney-General to draw up every instrument of whatsoever nature which was to pass the Great Seal. It was also his duty to send the Secretary a full, fair and accurate copy of the draft, together with a fiat or direction to that officer to engross the same. It was the Secretary's duty, on receiving such copy and fiat, to engross every such instrument and affix the Great Seal thereto. Whether this decision was wholly pleasing to the Secretary may be doubted, inasmuch as half of his fees still went to the Attorney-General, while he incurred those expenses of parchment and wax which the latter had found so burdensome.

Road building had lagged somewhat since the disbanding of Simcoe's Rangers. Hence it doubtless was with no little satisfaction that in March of 1799 a letter was read in Council containing an offer from one Asa Danforth to build a road between York and the Bay of Quinté, really a continuation of Dundas street.<sup>1</sup> The price stipulated was \$30 currency per acre, allowing four acres to each mile of road, including bridges and causeways. The proposal was recommended favourably by Council, but the price was to be moderated. The only difficulty being the matter of payment, it was proposed to raise the money by the sale of lands, and perhaps by settling land seekers on each side of the road under special conditions. The Council "heartily approved" this plan. On April 9th the scheme again was discussed.<sup>2</sup> Danforth had lowered his price to \$22.50 per acre, and the terms of payment were set in accordance with the mileage completed in a given time; as each ten miles was finished and inspected he was to receive payment for half of it. The surveying was to be done by the Government. The whole road was to be completed by July of 1800, and the portion from York to Smith's Creek (the present Port Hope) by January. These terms were unanimously approved by the Council. Danforth further petitioned that each good labourer on the work be allowed, on his recommendation, a 200-acre lot, as the prospect of such a reward would simplify the matter of obtaining good labour, and would act as an incentive to good work. He also asked the Council for three tents and two grindstones, "as they are articles which cannot be obtained without much trouble and expense."

The Council agreed to the labourers' grants, provided there were not over forty such recommendations and none of the applicants already had received over 1,000 acres by grant. Four grindstones were to be supplied. An agreement was drawn up and approved. Upon examination of the map of the proposed route it was seen that in places there was wet land, so the Surveyor-General was given discretionary powers to permit deviation from the straight line where necessary. At the same meeting of Council Surveyor-General Smith reported in favour of Dereham and Norwich as the two townships to be sold to cover the cost, so these were ordered surveyed, five townships in Durham and Northumberland counties to be held in reserve and sold if the two proved insufficient. It was decided to sell in blocks of 4,000 acres; advertisements were sent out on handbills and inserted in some of the New York, New Jersey and Pennsylvania newspapers.<sup>3</sup>

<sup>1</sup>Minutes of Council, March 26, 1799. State B, page 350.

<sup>2</sup>Ibid, page 358. April 9.

<sup>3</sup>Minutes of Council, July 3, 1799. State B, page 388.



By July 26th of 1799 Danforth had completed the road for nearly thirty miles east of York. An inspection of the first ten miles was ordered on November 5th, and on December 10th he received \$1,000 as half pay for what had been inspected, from York to the township of Hope. Senior Surveyor Chewett carried out the inspection. He was not wholly satisfied, and the Council considered Danforth "very far short of performance on his contract." In August of 1800 he received half pay on sixty-three miles of road, and on December 23rd it was reported passable from York to the River Trent.<sup>1</sup> No comment need be offered on the value of this highway, paralleling Lake Ontario on the direct route to the lower province.

In 1797 the Legislature of Upper Canada had petitioned the Crown to appropriate a certain quantity of lands for the establishment and support of grammar schools in the various districts, and of a provincial college or university as well. Home Secretary Portland approved the request and asked the Council, sitting as a Land Board, to report on it. On December 1st of 1798 the Board submitted a report.<sup>2</sup> A sum not exceeding £3,000 currency, and an annual income of £180, was considered sufficient for the establishment of one grammar school in each district. It could be obtained only by the sale of a part of the waste lands of the Crown. "If the institutions in question are to be deferred until they can be provided for from the annual income of any quantity of lands that can be appropriated for them," so ran the report, "they will be deferred either until they have been superseded by other institutions, or until four or five generations of ignorance and vice have rendered them useless." It was suggested that the annual income also should be derived from the waste lands, and four methods were put forward. One was the sale of land in sufficient quantity to insure from the proceeds, in the form of interest when invested in the British funds, the requisite yearly sum. Another was the reservation of sufficient lands to produce the equivalent sum annually when leased. A third was the appropriating and renting of sufficient Crown reserves. The fourth was the selling of a quantity of lands and using the proceeds to buy other lands which could yield an immediate rent. Of these plans the first was regarded with less favour than the others, the Board arguing that rent would increase where interest would decrease. So the second plan was chosen, and as it might not yield sufficient income at once, it was to be reinforced, if necessary, by a partial use of plan three or even plan four. The Board concluded that the appropriation should cover such a quantity of lands as, if sold immediately, would produce the sum of £18,000 cy. Estimating the average price at ninepence per acre, this would mean nearly 500,000 acres, or ten townships after deducting the Crown and clergy reserves. That sum would found four grammar schools, one at Newark and one at Kingston to be built immediately, with two others at Sandwich and Cornwall to be built later. In accordance with this report, the Surveyor-General was ordered to select ten townships which could be appropriated for the purpose. He selected five to the east of York and five to the west, suggesting that blocks from each section be put up for sale at the same time.<sup>3</sup> A report of all these proceedings was forwarded to London for approval, further action being suspended meanwhile.

<sup>1</sup>State B, page 466, and State C, page 102.

<sup>2</sup>Minutes of Council, State B, page 287.

<sup>3</sup>Smith to the Council, April 13, 1799. Q 286, I, page 131.

Some uncertainty had been displayed by individual officers in the matter of fees on deeds which were to issue to the heirs or purchasers of grants. Occasionally such persons claimed exemption from full fees or from the expenses of survey. After a number of such cases had been referred to the Council for decision, the need of special regulations was seen, and in June of 1799 it was ordered that whenever a deed was permitted to issue to the purchaser of lands originally given to a non-privileged person, he must pay the fees and expenses which the original holder would have paid. These consisted of the full fee on the number of acres granted, and if the land had been given to the original holder subsequent to June 30th, 1796, the expenses of survey in addition. If on the other hand the land had been granted to a Loyalist or other privileged person, and had been transferred to a second person under authority of a Land Board, the recipient was entitled to a deed free of expense. The same rule applied to all cases of inheritance. But persons purchasing grants originally held by privileged grantees were not so fortunate. As a special concession the Council permitted all such persons who applied for their deeds before the end of June to receive them upon payment of the half-fees only. But thereafter they were to pay both the half-fees and the expenses of survey. Russell probably had many a quiet chuckle over the latter clause, for the buying of rights from privileged persons under pretence of sanction by one of the early Land Boards was a favourite scheme of speculators. Under the new ruling such persons were obliged to pay the half-fees which otherwise would have fallen on the treasury.<sup>1</sup>

In July of 1799 Surveyor-General Smith presented a memorial in Council, stating that his personal affairs required his presence in England, and praying leave of absence for one year. The Council unanimously approved the request, and Russell acquiesced. In view of his absence, Smith requested a committee to examine into the state of his office. Three members of Council were nominated for the purpose, and in due course reported that everything was satisfactory; "we found his office in a state of the completest order, and exactly conformable to the schedule."<sup>2</sup> In his absence Smith deputed the charge of the office to the Senior Surveyor, William Chewett, and the Chief Clerk, Thomas Ridout, conjointly. The receipt of all monies issued to the office was taken over by the Honourable John McGill. The rest of the staff at this time comprised four Deputy Surveyors, one for each district: Mr. Christopher Robinson, who was Deputy Surveyor of Woods: an assistant clerk, a labourer and a messenger. Occasionally additional deputy surveyors and draughtsmen were engaged, when the volume of work rendered such necessary. The chainbearers, axemen and other accessory members of the survey parties were hired as wanted, and were not regarded as members of the regular staff.

Smith's instruction to Chewett and Ridout were set forth in writing in a most detailed and precise manner, and afford a glimpse of the daily routine of the office, its business facilities, and the standard set for the performance of its duties.<sup>3</sup> At the end of each month the officers in charge were required to pay to McGill any survey money which had been received, furnishing an account to the Secretary. The half-yearly accounts of the

<sup>1</sup>Minutes of Council, June 11, 1799. Land D, page 329.

<sup>2</sup>Minutes of Council, July 16, 1799. State B, page 403.

<sup>3</sup>Smith Papers, B 7.

deputy surveyors were to be accepted by them in Smith's name. A record of all fees received must be maintained, and the various books, after being used, were to be carefully replaced. All papers and plans were to be filed away with care, and copious and correct indexes to them prepared. "The stationery is to be used with frugality, and the covers of all letters laid aside into some niche, to serve for scrawls and calculations."<sup>1</sup> Minute directions were given as to the daily order of business. First, all lands not already described should be described; then the certificates lodged in the office should receive attention; after that the warrants of survey should be dealt with; and lastly, new regulations of all sorts should be studied and put into effect. The hours were to be from ten a.m. to three p.m., "and when you are not there, the doors and windows are to be kept shut and the fire left safe." The propriety and necessity of civility and attention to all persons was emphasized, as well to those whose appearance indicated poverty as to others. In all there were nine foolscap pages, hand-written, of these instructions.

Again in 1802 Smith had occasion to delegate the office to these two assistants.<sup>2</sup> In the new instructions which he prepared for their use upon this occasion, he referred them to the 1799 instructions for many details, merely emphasizing certain important points. Stress was laid on the necessity of charging only the regular fees on surveys, as also on speed in completing business. All the surveyors were to be kept busy, and none to remain on the pay-list otherwise. Six copies of the half-yearly accounts were to be made out, and the necessary vouchers supplied, of which one set was to go to the Council office, one to the Commissioners of Public Accounts in England, and one to Smith himself. All monies paid in for surveys were to be credited to the Government at once and applied at the end of the half-year to the salaries and expenses of the office. His own fees, for all transactions in which he was not personally concerned, he surrendered until his return, to be divided equally between them. On this occasion there were some eight pages of instructions. In both cases they illustrate Smith's interest and painstaking care in the duties of his important office. In the 1802 instructions reference is made to "the seven volumes which I caused to be prepared during the last winter, called Doomsday." They contained schedules of grants, arranged by farm lots according to townships and districts.<sup>3</sup> To them he referred Chewett and Ridout for assistance in making up a set of new atlases upon which they appear to have been engaged.

The filing systems of the office, while they appear somewhat clumsy in this day of card indexes and fireproof cabinets, were those commonly in use at the time. An account of them appears in Smith's "State of the Surveyor-General's Office," which was presented to the Committee of Inspection prior to his 1802 absence. The list of books, and of receptacles for papers of all sorts, is very long, but a few examples will illustrate the

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<sup>1</sup>This seemingly meticulous detail was not unnecessary in a day when ordinary stationery supplies were both expensive and difficult to obtain, because of the distance from manufacturing centres. Thus in 1802 one finds the Receiver General (Russell) including in his estimate of office expenses the following quaint items: Six dozen of black leadpencils at 7/6; one dozen papers of ink powder, 6/0; two bottles of Indian Rubber, 2/0.—*Minutes of Council, State C, page 199.*

<sup>2</sup>Smith Papers, B 7.

<sup>3</sup>These books now form part of the records of the Ontario Government Patents Branch.



whole. In the "right-hand Walnut Box" were to be found authorities and descriptions. The left-hand walnut box in the "Southern Recess No. 1" contained certain papers, while "Old Regulations" and other records were deposited in boxes in the "Northern Recess No. 2." Letters from 1790 to date were filed in "the upper black case," while the lower black case contained correspondence with specified persons. Other records were contained in "the north-western compartment of the large walnut writing desk," and "the long blue box covered with canvas, marked Surveyor-General's Department, Upper Canada," contained a schedule of plans of districts. The whole arrangement was perhaps as systematic as could be expected in the circumstances, and evidently was maintained in the neatest possible order.

To the Council members the methods used seem to have been perfectly satisfactory. In 1796, after an inspection of the office records, the following Minute was entered on the books: "In respect to number and description they are perfectly adequate, and contain clear and satisfactory records of the transactions that have passed in it from its establishment. . . . Resolved in consequence that the Board is perfectly satisfied with the mode in which the Surveyor-General arranges the business of his office."<sup>1</sup> Nevertheless errors were by no means infrequent, and often were extremely difficult to detect. One of the commonest was that of double entries for grants, originating in applications by persons of the same name, or in applications for family lands. An example, selected from many others in the office records, is as follows:<sup>2</sup>

"Anne Thompson, in addition, 200 acres. March 31st, 1797."

"Miss Anne Thompson, in addition, 200 acres. March 31st, 1797."

"Miss Anne Thompson, U.E., 200 acres in addition. March 30, 1797."

These three entries were observed, for a query was added—

"Are there three Anne Thompsons, or only one Anne Thompson?"

The matter was investigated, and a long explanation added below the query, to the effect that it "appears to be the same person."

Not all the officers could claim so well ordered a state of affairs as could Smith. The Attorney-General, as has been related, experienced great difficulty in directing the land affairs of his office. Provincial Registrar Jarvis also appears to have been involved in some measure of confusion, principally through the numerous changes in regulations. In March of 1799 he petitioned the Council for an allowance to cover the expense of having the whole of his entries made over in new books. Some four years earlier, in compliance with an Order in Council, he had had printed four blank books for recording patents, under a prescribed form. Shortly afterwards the form was changed, so that "the consequences have naturally been constant erasures and interlineations in order that the Registry should be conformable to the patents." From the existing state of the books, he asserted, "the most serious apprehensions may be entertained, they being in some parts scarcely legible, and also in unbound sheets."<sup>3</sup> The Council acceded to his request in part, though with evident reluctance. Lack of funds for the public services characterized in general the whole period under discussion, and its reaction upon the efficiency of the

<sup>1</sup>Minutes of Council, Land B, page 1. October 1.

<sup>2</sup>Smith Papers, B 6.

<sup>3</sup>Minutes of Council, March 26, 1799. State B, page 350.



public offices has to be borne in mind. Under such circumstances lack of administrative ability on the part of head officials could seriously complicate an already difficult situation.

In August of 1799 Lieutenant-Governor Peter Hunter arrived in Upper Canada, and Russell reverted to his former post of Receiver-General. Hunter's comments on the work done by the Executive Council prior to his arrival are interesting.<sup>1</sup> "The Executive Council are all good men, but I could not help observing that . . . Mr. Russell is avaricious to the last degree, and would certainly, as far as depended upon him, have granted lands to the devil and all his family (as good Loyalists) provided they could have paid the fees." Surveyor-General Smith, then absent in England, he described as one who already had rendered the most essential services to Upper Canada, both in his office and in Parliament. Smith had not yet received a permanent appointment to the office of Surveyor-General; Hunter strongly recommended that the appointment be made, and that an adequate salary be attached to it.

Of the fact of lavish grants during Russell's administration there can be little doubt. Portland observed in the return of lands granted between July 3rd and August 15th of 1799, at the close of Russell's term, that the average amount per grant was 459 acres. He presumed that so high an average must be explained by the inclusion of the grants to the Executive Councillors, but Hunter later informed him that such was not the case.<sup>2</sup> Later on, charges were made by critics of the administration to the effect that Russell used illegal means of obtaining grants for himself and his friends. There is no concrete proof that the accusation was well founded, but undoubtedly his position as president would give Russell the knowledge and means by which his own grants as an Executive Councillor, or the grants of his friends, could be selected in the most favourable localities, and it is quite possible that he made use of it for that purpose. The key to Russell's character is his caution. The desire for fees undoubtedly underlay his too-effusive granting of lands, but that desire originated in more than hope of personal gain. Under the new regulations, the amount of the funds applicable to public improvements throughout the province depended largely on the amount of the additional fees received from grants. Moreover, under both new and old regulations the comfort and satisfaction of the officers connected with the land department were in direct ratio to the total amount of their fees on grants. In these circumstances Russell would have no small inducement to increase the number of grants, if thereby he could oil to some extent the creaking wheels of the executive machinery, at the same time presenting a satisfactory front to his superiors in Britain.

The Standing Committee, appointed by Hunter to officiate during his absence in the lower province, grouped their duties under four heads comprising the administration of justice, the revenue, the land granting business, and miscellaneous matters.<sup>3</sup> On the subject of land business

<sup>1</sup>Letter to J. King, October 27. Q 286, II, page 424.

<sup>2</sup>Hunter to Portland, June 18, 1801. Q 290, I, page 48.

<sup>3</sup>It would appear that the members of this committee were not always unanimous in their decisions under these heads. Hunter, in a letter to Thos. Scott (Feb. 22, 1802), refers to "the diversity of private opinion which seems to exist among the gentlemen to whom I have delegated a share of my authority during my absence."—Hunter Papers, page 117.

they now intimated that the Council for some time past had been increasingly inclined not to dispose of any more of the waste lands of the Crown on payment of fees, except where the faith of the Government already was pledged, or where a considerable public advantage might be expected from it, and that there did not appear to be any immediate necessity for ordering surveys. This attitude may have been a natural sequel to the previous lavishness in grants, coupled with the presence of numerous deeds lying uncalled for in the Secretary's office. Hunter himself favoured the temporary stoppage of surveys, and in October orders were issued to that effect, the only exceptions being a few townships on the Thames River and near York.<sup>1</sup> Instructions concerning leases of reserves were issued to the Committee by Hunter. All applications were to be examined by them and, if approved, the applicants were to have verbal permission to take possession and improve the lots, the terms of the agreement being explained in full. In the meantime regular leases were to be prepared, which would be signed by the Lieutenant Governor on his return.

Toward the end of October in 1799 a petition of more than ordinary interest was passed upon in Council. It came from Benedict Arnold, and was based upon his services as Colonel of the American Legion of Cavalry and Infantry in the Revolutionary War. In 1797 Arnold first had presented his claims to the Home Government, estimating the losses for which he had as yet received no recompense at over £20,000. In that petition he asked for 50,000 acres of land in Upper Canada, being 10,000 for himself and 5,000 each for his wife and six children.<sup>2</sup> In 1798 he moderated his demand to 13,400 acres in all, asking that no condition of settlement attach to his own grant, as he did not wish to reside in the province.<sup>3</sup> Portland communicated with Simcoe on the matter, and the latter informed him that Arnold was "a character extremely obnoxious to the original Loyalists," for which reason it would be well to grant the request of non-residence.<sup>4</sup> Lord Cornwallis informed Portland that Arnold's gallant conduct at Guadaloupe in the West Indies entitled him to a much greater portion of lands than was usually allotted to field officers.<sup>5</sup> Portland accordingly ordered Russell to grant the 13,400 acres to Arnold and family, dispensing with the condition of residence on account of his Guadaloupe services. The grant was now passed in Council, subject to the existing regulations respecting fees on lands to reduced officers. Arnold objected to this arrangement, asking Portland that his grant be subject to fees under the old regulations, corresponding to the time at which he had petitioned for it. In 1800 Portland instructed Hunter to comply with this request.<sup>6</sup>

A temporary shifting of offices characterized the opening of the year 1800, due to the shooting of Attorney-General White in a duel with Mr. Small, Clerk of Council. One of Small's clerks temporarily took over the business of the Council office, while the Solicitor-General took the place of White until a new appointment should be made. Not long afterwards Russell brought to the notice of Council an instance of culpable neglect on

<sup>1</sup>Minutes of Council, State B, page 459.

<sup>2</sup>Q 283, page 327.

<sup>3</sup>Q 283, page 338.

<sup>4</sup>Q 285, page 417.

<sup>5</sup>Ibid., page 446.

<sup>6</sup>Q 287, I, page 119.

the part of the late Attorney-General with respect to his official duties in the Land Department.<sup>1</sup> He asserted that during his presidency, after he had removed the administration to York but while the Secretary's office still remained at Newark, White had proposed to him that he sign a number of the deeds prepared for the Great Seal, simply on the faith of White's fiats which accompanied each, and that he direct the Auditor-General to docket them in due course so that everything requisite for their completion having been done at York, there would be no necessity for transmitting them back from Newark. White had urged as an additional argument for such action the probability of deeds being lost in transport or of the seals being broken. Russell accordingly had signed a large number of the patents, without having reason to suspect that they were not all immediately forwarded to the Secretary. But when a readjustment of the office became necessary through the Attorney-General's death, Russell was informed that 283 of these deeds still remained without seals in White's office. He now requested permission to remedy matters by authorizing the Secretary to affix the Seal to these deeds and to enter them in the official records in the usual way. Needless to say, the request was granted immediately.

An irregularity of another sort was discovered by Hunter himself. Early in June he drew the attention of the Executive Council to the fact that there were certain deeds which he did not feel justified in signing, because in various respects they were irregular. Sometimes they were engrossed on paper instead of parchment; sometimes the numbers were expressed in figures instead of words; sometimes they were worded differently in places. He had asked the provincial judges for a decision, and now laid it before the Council.<sup>2</sup> The judges favoured parchment, although paper would not invalidate a deed, and preferred that the numbers be in words. Ordinary parts might be printed, the others put in writing. A draft of a model form to be used was submitted by them, which met most of the various instances in which deviations from the old form had occurred. In it the specification for the clergy reserves was removed to a place where it would not interrupt the operative part of the instrument. The Secretary in person was to sign all patents, never deputing that duty to an assistant. Variations in this model form might be made to meet special cases, but should be approved before adoption. On June 5 the Council recommended that the proposed form of patent be put into use in all cases where the order of the Lieutenant Governor in Council purported a common grant in fee simple. A fiat in a prescribed form, to be sent by the Attorney-General to the Secretary, would be the usual authority for engrossing the deed. But whenever the order of the Lieutenant Governor in Council purported a grant out of the usual course, the Attorney-General was to prepare a special draft of it for the inspection of Council; if approved it would be returned to him to be transmitted to the Secretary in the usual way.

The Secretary was directed to procure immediately from Lower Canada or Europe a proper quantity of parchment, in order that all future grants be made out on that material. In the engrossed deeds all numbers were to be expressed in words at length, not in figures, and there must be no

<sup>1</sup>Minutes of Council, February 4, 1800. State C, page 12.

<sup>2</sup>Minutes of Council, June 3, 1800. State C, page 45.



erasure, additions, or interlineations throughout the printed part. It was further recommended that the Attorney-General examine each patent as completed by the Secretary, endorsing it if found satisfactory.

Meanwhile the Council was receiving letters from various parts of the province complaining of numerous failures on the part of land holders to live up to the spirit, and often the letter also, of the conditions upon which the land had been bestowed. Early in February certain "inhabitants of Yonge Street" asked that the possessors of land on that road be compelled to clear the way in front of their respective portions. It was claimed that produce could not be brought in to York because the road was impassable during the greater part of the year.<sup>1</sup> Soon afterwards a petition was received from the Grand Jury of the Western district, asserting that the greater number of the town lots in Sandwich, granted in July of 1797, still remained unimproved although the time stipulated for making improvements had passed.<sup>2</sup> As a result the settlement of the town had been greatly impeded, and real settlers in both town and country injured. It was further charged that many owners of such lots had received deeds for them, contrary to the regulations. Although there were only some seven or eight houses in the whole town, outside persons who wished to build could not obtain a grant, and were forced to buy lots. It was suggested that all vacant or unimproved lots in the town be forfeited, and regranted under strict penalties for non-improvement. As was usual in such cases, the Surveyor-General was ordered to report upon the matter, action being delayed until the report should be received. The final result was a stricter enforcement of the rules in both instances, but the improving of Yonge Street conditions was slow indeed.

In August a proclamation was issued by Hunter ordering all persons who claimed possession of land grants, but had not yet taken the oath of allegiance and the other oaths required by the regulations, to do so within twelve months from date, on pain of the legal penalties involved. Commissioners were named in the proclamation, whose duty it was to administer the oaths within their respective districts.<sup>3</sup> Another readjustment, suggested by the presence in the Surveyor-General's office of several warrants liable for survey money, was recommended by Council in October.<sup>4</sup> As has been related, the Provincial Secretary at first received the survey monies when he issued the patents, but this proving unsatisfactory because of the large number of patents not taken out, the Surveyor-General received permission to deal with them when issuing his description on the warrant for survey. It was now suggested as a further improvement, that the Surveyor-General be ordered to stay the description on warrants until the survey money was paid. The suggestion was approved and the order issued in due course. It may be noted that while changes of this sort were being made for the benefit of those superior officers of the Land Department who received fees as a part of their official remuneration, the needs of the junior clerks were not forgotten. Consequent upon a memorial from the Executive Council to Portland, setting forth the inadequacy of clerical salaries, the latter authorized such additions "as you in

<sup>1</sup>Minutes of Council, February 4, 1800. Land D, page 462.

<sup>2</sup>Minutes of Council, August 8, 1800. State C, page 66.

<sup>3</sup>Ontario Archives, 1906, page 202.

<sup>4</sup>Minutes of Council, October 7, 1800. Land B, page 564.



your judgment and discretion, and upon mature consideration of the regard due to public economy, shall judge necessary.”<sup>1</sup>

In a list of objects worthy of the attention of new settlers in Upper Canada, sent to the Home Government in 1791, the growing of hemp and flax occupied an important place.<sup>2</sup> Hemp was especially valued, as providing material for the use of the Royal Navy. References in official correspondence to its cultivation in Upper Canada are less frequent than in the case of Lower Canada, but undoubtedly it was grown to a certain extent. In December of 1800 Portland wrote Hunter intimating his wish that the industry should be encouraged by bounties and any other suitable means, in which case the Home Government as a further inducement would direct grants of land to be made to the growers of hemp “in a certain proportion or ratio to the number of acres cultivated by any person in any year.”<sup>3</sup> He further asked that the Executive Council prepare and forward a report on the subject, including an opinion as to what ratio would be suitable. In June of 1801 the report was completed and approved in Council. In it the scheme was heartily endorsed, and the amount for suitable land grants was set at 600 acres each to all persons who in their respective districts raised the greatest amount. The two next in order in every district were to receive 400 acres each.<sup>4</sup> Upon occasion, individual grants of a larger size were made for the same purpose. In 1807 a “specialist” in hemp culture named William Bond was recommended by the Lords of the Treasury for a 1,200 acre grant in Upper Canada, “to cultivate hemp and propagate rabbits,” the land to be half cleared and half wild.<sup>5</sup> The grant was authorized by Home Secretary Castlereagh in 1808. The “Society for the Encouragement of Arts and Manufactures” in Upper Canada gave medals for the quality of hemp produced by any grower within the province, and Bond in due course acquired one of the medals. Bounties also were given, and Commissioners were appointed by Act of Legislature to apportion them. D. W. Smith and the Honourable John McGill were the first commissioners.<sup>6</sup> But the results obtained were very inconsiderable. As Sir Francis Gore explained the situation in 1810, “the culture of wheat rewards the farmer so much better than that of hemp, at any price which has been offered, that the event has not corresponded with the means taken to encourage this stable commodity.”<sup>7</sup> It is interesting to note that Governmental attempts to foster hemp production continued to a comparatively late date. In 1862 the Minutes of Council record a request from the Minister of Agriculture for \$400 for the purpose of having lectures delivered on the subject by “competent persons,” in order to “induce its cultivation generally and in such perfection as shall enable it to sustain competition.”<sup>8</sup>

Lieutenant Governor Hunter took an active interest in the business of the land granting offices, and their records contain many instructions which he drew up for the guidance of this important branch of the administration. In June of 1800 he required the Surveyor-General, recently

<sup>1</sup>Portland to Russell, January 10, 1801. Q 278A, page 220.

<sup>2</sup>Q 278, page 338.

<sup>3</sup>Minutes of Council, State C, page 115.

<sup>4</sup>Ibid, page 121.

<sup>5</sup>Q 310, page 379 and Q 311, II, page 476.

<sup>6</sup>Hunter Papers, page 95.

<sup>7</sup>Q 313, I, pages 31-32.

<sup>8</sup>Minutes, State Book X, page 328.

returned from England, to wait upon him each Monday morning at ten o'clock with a schedule of the locations asked for during the preceding week, in order that his pleasure might be taken thereon. This arrangement was discontinued in September of 1802, probably because it was found personally inconvenient, but its inception signified his intention of closely supervising the bestowal of grants. In a letter to the Council the motive for this vigilance is revealed. "The Lieutenant Governor has laid it down as a rule from which he will not depart, that the whole of the lands already surveyed in the province must be located before any new surveys will be ordered."<sup>1</sup> Other instructions given in 1801 cover the whole routine of the offices. The clerks were admonished to spend all their time at their duties, afternoons as well as mornings, in view of the "present shameful arrears of business." Speed in issuing descriptions and patents was ordered. Each Monday morning early the Secretary was required to send to the Surveyor-General's office and the Council office eighteen descriptions for each of the four clerks therein, with the necessary parchment, which deeds were to be engrossed and sent to the Attorney-General for examination each Saturday evening. Hunter expected that this assistance, added to what work would be done at the same time in the Secretary's office, would accomplish a great deal. He frankly informed the clerks that the privilege accorded him by Portland of increasing their salaries would be used in proportion to the diligence and correctness with which they discharged this part of their duty. Payment of fees on grants was ordered made to the Receiver-General instead of the Secretary, and the latter was not to issue a deed until the Receiver-General's receipt for fees was produced.<sup>2</sup>

A further change in procedure was ordered by Hunter in July. Thereafter all Orders in Council, Land Board certificates or other authorities requisite for the issuing of grants were to be sent in the first place to the Attorney-General instead of the Surveyor-General. The Attorney-General was then to issue his fiat to the Surveyor-General, who was to send the description to the Secretary, to whom it would be a warrant for the engrossment. The balance of the procedure remained unchanged.<sup>3</sup> In August Hunter ruled that in future the weekly Land Committee of Council (usually called the "Board") and the Standing Committee in his absence, should be at liberty to consider only ordinary applications for 200-acre grants subject to settling duties. All other petitions were to be lodged in his office, and there filed against his return. A special effort in the distribution of privileged deeds was requested of the Secretary, and for this purpose the officers commanding the King's vessels, and the Commissaries at the posts, were to receive instructions to give especial care to the Secretary's packets, taking receipts one from the other until such were carefully delivered to the Secretary's agent.<sup>4</sup> The Auditor-General was instructed not to audit any deed upon which the Regulation (Old or New) was not distinguished, or whether it was subject to full or half fees. Again in January of 1802 the Secretary was urged to delay as little as possible those applicants coming in person to York for their deeds, and in July the Surveyor-General was requested to rush the descriptions for

<sup>1</sup>Smith Papers, B 9, page 247.

<sup>2</sup>Smith Papers, B 9, or Minutes of Council, Land D, page 657.

<sup>3</sup>Ibid (page 692 in Minutes).

<sup>4</sup>Minutes of Council, Land D, page 699.

grants as soon as satisfactory certificates of settling duty performed had been presented.<sup>1</sup>

Two rulings of especial interest to certificate holders were made by the Executive Council in 1801. One was in the case of Mrs. Mary Rogers, whose late husband had willed her his grant of land although a deed had not yet issued for it. The Attorney-General was of the opinion that the Lieutenant Governor in Council had power only to bestow the King's bounty in the first place and directly, hence the lady could not legally be given a deed. But the Council, under the leadership of the Chief Justice, disagreed absolutely with this opinion, declaring that the Great Seal had full powers in such cases, and the deed was issued accordingly.<sup>2</sup> The other decision had reference to cases in which the certificates or similar authorities had been lost. It was decided that, the proper affidavits of search made having been completed, the Council had authority to issue an order for the obtaining of a deed in the usual way. A list of such deeds was to be kept in the Secretary's office, however, to guard against improper use of the originals should these later be found.<sup>3</sup>

The necessity of some arrangement for supervision of the public accounts daily was becoming more apparent, and the putting into effect in this year of the system of reserve leases made some plan doubly imperative. Accordingly Hunter appointed the Honourable John McGill to be Inspector-General and Comptroller of the Public Provincial Accounts. The appointment occasioned a minor change in the routine of the Land offices. Half-yearly accounts were now sent by the Provincial Secretary to the Lieutenant Governor's office, were then inspected by McGill, and finally were audited by the Executive Council. The half-fee accounts were sent in quarterly. The Secretary now had to insert in all deeds, after the names of the nominees, their respective distinctions, whether Loyalist, military, or otherwise.<sup>4</sup> The number of these privileged deeds was still considerable. In August of 1801 a Committee of Council reported 1,333 deeds perfected before Hunter's administration, of which 964 were U.E. or M.C. Over 960 deeds on which fees actually were due the Land officers remained in the office; of these, 227 were privileged. Many of these 960 deeds had lain in the office for years, and all of them had been there two years, "whereby not a few have been destroyed, and a considerable number of others defaced by mice."<sup>5</sup> Evidently this report evoked some supply funds from the treasury, for in the next report in September of 1802 the sealed patents were described as "properly secured by tin plates from the injuries of mice."<sup>6</sup>

With the installation of the system of leasing reserves there came the fixing of lease fees to the officers concerned. At Hunter's request, a Committee of Council prepared a report on the subject, which was submitted to him in July and approved by the Home Government in October.<sup>7</sup> The Committee considered as suitable a fee approximating the half-fee on a

<sup>1</sup>Smith Papers, B 9.

<sup>2</sup>Minutes of Council, July 17. State C, page 138.

<sup>3</sup>Ibid.

<sup>4</sup>Minutes of Council, State C, page 142. August 18.

<sup>5</sup>Q 301, page 145.

<sup>6</sup>Ibid, page 148.

<sup>7</sup>Minutes of Council, State C, page 221, or Q 293, page 70.



200 acre grant, amounting to £1 12s. 6d. currency. This was to be divided among the land officers in the following proportions:

	s.	d.
Clerk of Council .....	5	0
Attorney-General .....	5	6
Surveyor-General .....	6	3
Secretary and Registrar .....	6	3
Lieutenant Governor .....	6	3
Auditor-General .....	3	3

Excepting the sum of 2s. 6d., to be paid by the lessee when he received the lease, as an offset to the cost of the stationery required, this amount was to be taken out of the rent itself as it accrued, instead of being paid by the applicant. The reason for so doing lay in the belief that by not burdening the lessee with fees more reserves would be applied for and would be occupied earlier. It was also recommended that alienation of leases be permitted if desired. At the end of the year a more specific clause respecting the rent of odd lots was added to the regulations.<sup>1</sup> When lots were under 200 acres the usual rent was to be charged as advertised, but when over 200 acres an additional rent for every five acres was to be added, at the rate of threepence currency for the first seven years, sixpence for the second, and ninepence for the third. If the excess amounted to less than five acres no extra rent was to be charged.

It was not often that Hunter felt himself called upon to over-rule the decisions of his Council, but occasionally this happened. A specific instance occurred in July of 1802, over a matter affecting U.E. grants. A petition for land was received from Rebecca Markle, step-daughter of a Loyalist. The Council recommended the petitioner for 200 acres, "having always considered the stepchildren of U. E. Loyalists as coming within the spirit and meaning of the Royal Instructions in behalf of their children."<sup>2</sup> But Hunter refused to sanction the grant, and his decision was entered in the Minute Book; "The stepchildren of United Empire Loyalists cannot be considered as the children of Loyalists, and therefore cannot be admitted as privileged."

In June of this year a proclamation announced the formation of a new district out of the Counties of Durham and Northumberland, to be called the district of Newcastle.<sup>3</sup> As usual, the change was made with a view to convenience in administering the affairs of a section of the province which had become comparatively populous. Not long after this change had been effected, the Council had occasion to re-define the limitations of the grounds upon which grants were awarded by the Provincial Government, incidentally correcting what may have been a fairly widespread impression. An applicant named Emons petitioned for a certain farm lot. He chose to base the petition on a claim for personal losses to the amount of £1,300 sustained in the Revolutionary War. The decision given by Council stated in explicit terms the uselessness of expecting to receive lands on such a claim. "There is no power in Canada to grant the waste lands of the Crown in compensation for losses, but the Committee of Council may take up the application of the petitioner as a common petition."<sup>4</sup>

<sup>1</sup>Minutes of Council, December 30, 1802. Land E, page 175.

<sup>2</sup>Ibid., page 31.

<sup>3</sup>Ontario Archives, 1906, page 208.

<sup>4</sup>Minutes of Council, July 27, 1802. Land E, page 52.



A number of minor matters were disposed of in the latter half of 1802. One related to the occasional appearance of defective Orders in Council and other early authorities for land grants, due to faulty descriptions.<sup>1</sup> The Attorney-General complained that he could not, in good faith, issue his fiat for them. The Council decided that first of all resort should be had to the Council office, to see if any better descriptions or additions could be obtained from the original petitions or entries. If this failed, the grantee should be described "of that township where the land to be granted is situate," and then the best possible description appended. At the same time it was decided to obtain from the various districts the original Books of Proceedings of the Land Boards, as these would be a great help in such cases. To judge from the records of the Council, this measure appears practically to have ended the troubles due to grants given under Land Board certificates. Another decision made at this time was intended to provide a short cut to the solution of dubious cases. Whenever the original nominee to a grant presented the Surveyor-General's description to the Attorney-General, that document was to be sufficient authority to the latter for the issuance of his fiat, without further reference to the original Order of Council or other document on which the description was based. If any other person produced it, claiming the land by virtue of purchase or other transfer, the Attorney-General was to wait upon a favourable report by the commissioners appointed under the 1797 Act for securing titles to land before issuing his fiat.<sup>2</sup> A little later upon complaint from the Attorney-General respecting the difficulty of drawing up the form for a grant of land on a waterfront, the Council prescribed such a form, and laid down as the condition of receiving any water lot, the building of "a good and sufficient wharf, fit and proper for the landing of goods, wares and merchandise thereon," but not obstructing navigation.<sup>3</sup>

A decided improvement in the existing method of distributing the full-fee patents was devised by Receiver-General Russell and put into execution in November.<sup>4</sup> It consisted simply in the sending of them by the Secretary to the various districts, for distribution by his deputy in each. Not more than one hundred deeds were sent to a deputy at one time. Each deputy entered a bond of £500 for the faithful discharge of the trust of delivering these to the grantees, accounting quarterly for them to the Receiver-General. Special boxes were made, one for each district, the corresponding names being marked on them. Each box was sufficiently large to hold one hundred deeds and was packed "conformable to a schedule to be sent to the Receiver-General, signed by the Secretary, specifying alphabetically the names of the grantees, the fees to be paid, the number of acres granted, the townships wherein situated, and the dates of the patents." A similar schedule and the key of the box were sent to the deputy. The deputies received one dollar from each grantee for their trouble and expense, "which it is presumed the grantee will not object to." It was later agreed that caveats against any of these deeds, when in the deputies' hands, should not stop their issuing, as the matter would be one for the law courts alone.<sup>5</sup>

<sup>1</sup>Minutes of Council, November 29, State C, page 254.

<sup>2</sup>Minutes of Council, December 7, 1802. Land E, page 159.

<sup>3</sup>Ibid., page 175.

<sup>4</sup>Minutes of Council, Land E, page 149.

<sup>5</sup>Case of Malcolm McDougall of Charlottenburg. Ibid., page 308.

A sequel to this enactment was one passed on December 30, for the purpose of expediting the completion of patents.<sup>1</sup> Many persons continued to give trouble to the land officers by failing to complete their patents within a reasonable time from taking out the grants. Hunter, in Council, now ordered a new procedure. All petitions were to be signed, and should contain a promise to pay to the Receiver-General within three days of the date of the Order in Council the full fees for patent and survey. Within four days from the date of the order the petitioner would be expected to present the Receiver-General's receipt to the Clerk of Council, and then within twenty-one days of the order must attend in person or by agent and take out his deed. Any agent in the business was to be resident in York. The Clerk of Council was to file the Receiver-General's receipt, giving the petitioner a copy of it, and the combined order and receipt were to be the Attorney-General's authority for issuing his fiat, the fiat in turn being the Surveyor-General's authority for issuing the description, and that in its turn would be the Secretary's authority for engrossing the deed. Since twenty-one days was the time limit on patents, the Council was to meet as a Land Board only once in three weeks.

The matter of fees on the lands of Loyalists again cropped up in July of this year. Hunter asked the Council to consider whether it was fair to charge Loyalists full fees for land over 200 acres in quantity, ready to issue under the old regulations, since the Government paid the half-fees on 200 acres and no additional trouble was incurred for the excess, as it was included in the same deed. He also pointed out that many Loyalists were assigned land under the old regulations in more than one township merely because sufficient unlocated land could not be given them in the township they desired; hence it was no fault of theirs and it would be fairer to charge them on the additional patent required only sufficient fees to cover the cost of the stationery. As a guide to his own attitude, the Lieutenant Governor declared that even if the officers decided to retain the full fees in such cases he would waive his own claim for a part of them; the surrender of these fees would not materially affect the officers, and would be pleasing to the Government as rendering a little extra satisfaction to Loyalists. The Council perforce acquiesced in the suggested arrangement, and it was adopted in due course. But at Hunter's own suggestion the exemption was not extended to Loyalists' children who had received over 200 acres and had occasioned the preparation of extra deeds. There was one dissenting voice—that of Jarvis, Provincial Secretary and Registrar. He pointed out that while it made little difference on amounts up to 500 acres, above that amount the difference was considerable. He preferred to take the fee rather than receive from the Government the expense of the stationery. Jarvis estimated the expense at six shillings and halfpence per deed, a faulty one doubling the amount. Hunter asked the Council for a special report on this objection. It was prepared, and showed that the Council members were of the opinion that the Government would be in pocket were Jarvis allowed to retain his fees, because the greater number of deeds being for small grants, on his own estimate he would lose considerably. However, since the Secretary evidently did not see the matter in its proper light, a recommendation was made to the

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<sup>1</sup>Minutes of Council, Land E, page 175.

effect that his request be granted, but that room be left for him "to discover his error" and join the rest in waiving all claim to these fees.<sup>1</sup> This was done, and there the matter rested for a time.

One of the first measures passed by the Council in 1803 brought about a needed reform in the currency. Hunter was of the opinion that in the new regulations imposing an additional fee, sterling and not provincial or "Halifax" currency was meant. Instructions to that effect now were issued, with the reservation that on grants under the old regulations the money for fees was to be computed as formerly.<sup>2</sup> The change was a distinct gain to the officers in receipt of fees. But the number of deeds left in the Secretary's office with fees unpaid still was large. A report by the usual Committee, in April, gave 2,555 as the number of grants signed by Hunter to date, of which 1,704 were unpaid. It is to be noted that the Land Department at this time appears to have been improving in efficiency. Chief Justice Elmsley having resigned in 1802, he was succeeded by Allcock, and the latter had undertaken to straighten out at least part of the confusion existing in the offices. Hunter summed up the situation in characteristic manner: "Much has been done, and much remains to be done."<sup>3</sup>

On June 1st, of 1803, Hunter, in Council, cut down the Surveyor-General's fees, eliminating the fee for search on the ground that the making of search constituted one of the routine duties of the office.<sup>4</sup> In addition the 2½ per cent. commission on survey monies was suspended early in 1804. The results of this cut in the perquisites of the office were to appear later on. In the collection of rents on Crown and clergy reserves an allowance of 5 per cent. was made to the sheriffs of the districts, because that service clearly was not a part of their official duties. An allowance of this sort would form no small inducement to industry in collection, and at this time the Government anticipated considerable revenue from that source. The arrangement was limited to seven years, but later (1811) was renewed for a similar period.<sup>5</sup> The sheriffs were required to give security with two sureties in £100 each. As an aid to their efforts a proclamation was issued, requiring lessees to pay their rents as prescribed, upon pain of legal proceedings and ultimately resumption of the land.<sup>6</sup>

The condition of Upper Canada was improving. Roads were being opened and bridges built, while markets for farm produce were growing in number and size. In so large and thinly settled a country, with resources so little developed and hence with few sources of income, the construction of public utilities necessarily progressed but slowly. The lure of the land, however, continued to attract a steady stream of immigration. A notable addition to the population, in this year and in 1804, came in the form of a body of Scotch Highlanders, including disbanded soldiers of the Glengarry Fencibles. A strong settlement was formed in what was later called Glengarry County. Their leader, Macdonell, received 1,200 acres and each family 200 acres, on the same terms as military

<sup>1</sup>Minutes of Council, July 7, State C, page 224.

<sup>2</sup>Ibid., page 270. To reduce currency to sterling, deduct one-tenth.

<sup>3</sup>To Hobart, May 20, 1803. Q 249, page 59.

<sup>4</sup>Minutes of Council, State E, page 319.

<sup>5</sup>Minutes of Council, April 27, 1811. State E, page 365. For the original order see State C, page 310.

<sup>6</sup>Ontario Archives, 1906, page 218.



claimants, save that they were subject to patent and survey fees.<sup>1</sup> Similar groups of Scotch Roman Catholics spread through the district between the Ottawa and St. Lawrence rivers and elsewhere in the province. With increase of population came a more specific system of assessment. By an Act of Legislature in 1803 only certain descriptions of property were to be assessed, and the rate was set at one penny in the pound. Land was the principal subject, and its value was set at twenty shillings per acre where cultivated, one shilling per acre where uncultivated. The tax was one penny per acre on cultivated and one-twentieth penny on wild land.

In 1798 an order had been issued forbidding the inclusion in the U.E. list of German troops employed by Britain, or of seamen who had served on the Great Lakes. These persons thereafter were classed as military claimants. At Hunter's suggestion they were now forbidden even this privilege, the Council stating explicitly that only British soldiers who were discharged at the Peace of 1783 were entitled to receive lands as military claimants.<sup>2</sup> All others were required to pay the usual fees. The practice of issuing Loyalist and military claimant grants free of expense was uniformly insisted upon by the Council; in cases where, through error, fees had been charged, the amount of the fees was refunded to the applicant when he reported and proved the error. An instance of such action is recorded in the Council Minutes for July of this year, when a certain Christopher Gallinger complained of having had to pay full fees for his deed, although he was a military claimant. Upon corroborating the truth of his statement, the Council ordered the full amount of the fees to be returned to him.<sup>3</sup>

In May of 1804, David William Smith resigned his post of Surveyor-General. The resignation was approved by the Home Government, and he was given a pension of £200 in recognition of his long and faithful service in Upper Canada. He was succeeded by C. B. Wyatt, Chewett and Ridout temporarily carrying on the business of the office until his arrival. Smith's work in the province undoubtedly was characterised by industry, caution and solicitude for the best interests of the public whom he served. If the work of his department achieved only a partial measure of success, the fault lay largely with those higher officials from whom he received his orders, and especially with the Colonial Office, originators of the provincial land policy. When a course of action was mapped out, Smith was the person upon whom fell the burden of the practical details involved, and almost invariably his devices were approved and employed. His character and reputation were good, and great reliance was placed on him by the government officials. His office was inferior to none, save perhaps the Lieutenant Governor and Chief Justice, and offered correspondingly great temptations.

Simcoe bore witness to Smith's integrity. He cited an instance in his own case, when he and Chief Justice Osgoode were offered one million acres for themselves and their friends if they would grant to a certain company a tract of three million acres, all the expenses of settlement to be defrayed by the company; "such offers, though not to that amount, have I doubt not been made to the Surveyor-General, and might be acted

<sup>1</sup>Q 293A, page 39, or Minute of Council, Land O, page 522.

<sup>2</sup>Minutes of Council, Land E, page 361.

<sup>3</sup>Minutes of Council, Land F, page 63.



upon by collusion without any possibility of the Governor's Council being made acquainted with the transaction."<sup>1</sup> Chief Justice Elmsley in a letter to Smith, with whom he was on the most intimate terms, indirectly confirms the latter's reputation for willingness to assist in every possible way all persons who had occasion to consult him in his official capacity. "I know of no man," wrote the Chief Justice, "who has more trouble given him than yourself, because there is no man who voluntarily does so much as you do for other people."<sup>2</sup> But perhaps the highest estimate of his character was that given by Simcoe to Portland, in 1799: "I know of no man better fitted to fill the office of Lieutenant Governor."<sup>3</sup>

The vexatious question of fees again had cropped up. On December 30, 1802, a memorial from the land officers had been presented to Hunter requesting an increase in the amount of fees.<sup>4</sup> To prove the reasonableness of this new request, the petitioners pointed out that the bulk of the grants were either for 200 acres or were to privileged persons. In either case the fees were small, and were divided among eight officers. The labour, time and expense were just the same as in the case of 1,000 acre grants. If grants of the latter size were the usual thing, the situation would be entirely satisfactory, but unfortunately the reverse was true. Especially bad was the case of the Provincial Secretary, who had to procure at his own expense the parchment and wax of the deeds, losing thereby a considerable sum on each small grant. Hunter referred the petition to the Council, who reported early in 1803 that the complaints were well founded, and gave a unanimous opinion to the effect that the fees were too small adequately to remunerate the services of the officers. So far as the Secretary was concerned, unless he were speedily relieved "certain and inevitable ruin must fall upon him and his numerous family." Since Hunter had come to Upper Canada, not less than 3,500 patents had been made out, upon each of which the Secretary had lost money—over three shillings each on regular 200 acre grants, and over four shillings on privileged grants. This circumstance had involved him in "very serious difficulties." The Council intimated that Portland, in dealing with the table of fees, had thought the usual grant would be 1,000 acres, as it was in Lower Canada. The best solution was the increasing of the fees rather than the increasing of the size of grant, for in the latter case the land would be "lavished away." It would be unwise to include in one deed a number of grants aggregating 1,000 acres, because of the litigation which inevitably would ensue in course of time.

Appended to the report was a complete new table of fees, formulated on what the Council considered a satisfactory basis. A letter from Hobart in January of 1804, authorized Hunter to adopt the alterations suggested by Council,<sup>5</sup> and the new set of fees, as finally put into effect, was as follows:

<sup>1</sup>Smith Papers, B 15, Insert, or Q 286, II, page 535.

<sup>2</sup>Elmsley to Smith, Smith Papers, B 8, page 13.

<sup>3</sup>Smith Papers, B 15, Insert.

<sup>4</sup>Minutes of Council, State C, page 275, or Q 294, page 9.

<sup>5</sup>To Hunter, January 9, Q 293A, page 47.

	£	s.	d.	Total £	s.	d.
Town lots and grants under 100 acres.....	5	11	0			
Fees of survey .....	18	0		6	9	0
On all grants of 200 acres, 6d. per acre, as authorized 1798 .....	5	0	0			
Further fee, as authorized 1804.....	1	19	4			
Fees of survey .....	1	4	9	8	4	1
On all grants of 300 acres.....	7	10	0			
Further fee, as above.....	2	19	0			
Fees of survey .....	1	17	1½	12	6	1½
On all grants of 400 acres.....	10	0	0			
Further fee .....	3	18	8			
Survey .....	2	9	6	16	8	2
500 acres .....	12	10	0			
Further fee .....	4	18	4			
Survey .....	3	1	10½	20	10	2½
600 acres .....	15	0	0			
Further fee .....	5	18	0			
Survey .....	3	14	3	24	12	3
700 acres .....	17	10	0			
Further fee .....	6	17	8			
Survey .....	4	6	7½	28	14	3½
800 acres .....	20	0	0			
Further fee .....	7	17	4			
Survey .....	4	19	0	32	16	4
900 acres .....	22	10	0			
Further fee .....	8	17	0			
Survey .....	5	11	4½	36	18	4½
1000 acres .....	25	0	0			
Further fee .....	9	16	8			
Survey .....	6	3	9	41	0	5

These fees did not include the sum of 5s. 6d. paid to the Clerk of Council by the petitioner upon presenting a petition, whether it were successful or not. On patents for more than 1,000 acres the fees were calculated by the same rule as for the first thousand, sixpence sterling per acre and a further fee of 19s. 8d. for every additional hundred acres, exclusive of the fees of survey. The half fee to be paid by the Crown on all patents for less than 100 acres, to military claimants, Loyalists and the children of Loyalists, was £1 2s. 7d. On similar patents for 100 acres and upwards it was £1 7s. 4d.<sup>1</sup>

<sup>1</sup>Given in detail, Q 299, page 135.

The fees to the land officers and their distribution was as follows:<sup>1</sup>

	Town Lots and Grants under 100 Acres	100 to 500 Acres Inclusive	600 Acres	700 Acres
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Governor.....	1 1 0	18 0	12 7	14 8
Secretary.....	12 6	9 0	7 6	8 9
Attorney-General.....	12 6	9 0	7 6	8 9
Surveyor-General.....	1 7 6	9 0	16 6	19 3
Auditor-General.....	7 6	6 0	4 6	5 3
Clerk of Council.....	12 6	4 6	7 6	8 9
Register.....	12 6	2 3	7 6	8 9
Deputy Surveyor of Woods.....	5 0	11	3 0	3 6
Totals.....	5 11 0	2 18 8	3 6 7	3 17 8

	800 Acres	900 Acres	1000 Acres
	£ s. d.	£ s. d.	£ s. d.
Governor.....	16 9	18 10	1 1 0
Secretary.....	10 0	11 3	12 6
Attorney-General.....	10 0	11 3	12 6
Surveyor-General.....	1 2 0	1 4 9	1 7 6
Auditor-General.....	6 0	6 9	7 6
Clerk of Council.....	10 0	11 3	12 6
Register.....	10 0	11 3	12 6
Deputy Surveyor of Woods.....	4 0	4 6	5 0
Totals.....	4 8 9	4 19 10	5 11 0

For every additional thousand acres the fees amounted to £5 11s. sterling, and so in proportion for additional quantities of less than 1,000 acres over the first thousand.

This matter being settled to the satisfaction of the land officers, with the probable exception of Secretary Jarvis, for whom no special provision had been made, a further request was put forward by Russell, acting in their behalf. Late in 1803 Hunter had directed the Secretary to hand over to the Inspector-General all privileged deeds lying uncalled for in his own or his deputies' offices. The Inspector-General was to take measures to have these delivered to the respective grantees, charging to the Crown in the half-yearly accounts the half fees on such as were issued. Russell, thinking this would cause long delay in receiving the fees, which happened to be due mainly on grants bestowed during his recent administration, now selected 247 of these against which no fault could be found, and admitted by the Inspector-General to be fully entitled to privilege, and requested of Hunter permission to have a warrant issue in the usual way covering the amount due the officers—over £400 currency. In the memorandum he stated “that when those officers accepted of their respective employments in this new and distant province, they were taught to

<sup>1</sup>Given in detail, Q 301, page 113.

consider the fees allowed and promised them to be intended as an aid to the smallness of their salaries." Hence "they naturally valued themselves upon the joint amount of those fees and their salaries in calculating their means of support, and ventured to apportion their expenses accordingly," with the very natural consequence that they ran into debt. Russell gave a number of minor arguments in the same strain, stressing the ragged condition of the patents themselves, and the long time which would ensue before the officers received their half fees. But to his great astonishment and mortification, Hunter refused the request with this short answer: "You have taken much pains to write a great deal of nonsense. The officers . . . had no right to spend money before they got it."<sup>1</sup>

In June a recommendation was made by Council that all future applicants for land present themselves in person, "the Committee conceiving that dispensing with the personal appearance of applicants lays the Executive Government open to gross fraud."<sup>2</sup> The measure as first proposed was not to include Loyalists, but the final regulation appears to have included that class. It was followed in September by an attempt to form in York a centralized depository for all the original authorities used up to that time in the making out of grants.<sup>3</sup> The deputies in charge of the Surveyor-General's office were ordered to report to Hunter, where all documents, books, papers, maps, transactions and other materials of the sort were deposited. The report was most satisfactory. Chewett and Ridout stated that "no official letters, Orders in Council, or other documents directed to and received by the Surveyor-General previous to July 18, 1802, are in our custody, nor in any part of the house in which is the Surveyor-General's office, to our knowledge." They were of opinion that all these were in Smith's personal possession, "he having verbally declared that he considered them as his property, and to be the vouchers and authorities for his doings as Surveyor-General." Copies of all of them, however, were entered in the books of the office.<sup>4</sup> Curious as this proceeding may appear nowadays, it must be remembered that it was the custom of the time in official circles. Smith later asserted that he had taken the papers with the approbation of Hunter, and the Inspector-General of Accompts at Somerset Place advised him to retain them.<sup>5</sup> The affair was settled by an order from the Treasury Lords in June of 1806, directing Smith to send to Upper Canada copies of all the documents, "which it is presumed will answer the purpose for which the originals were demanded."<sup>6</sup>

The methods employed by the Surveyor-General in supervising the expense of his deputy surveyors were even less perfect than the office methods, and opportunities for fraud were proportionately numerous. As usual in such circumstances the evil grew steadily, until the break came in the case of William Hambly, Deputy Surveyor engaged in the survey of East and West Gwillimbury, whose accounts were suspended by audit of Council. Hambly confessed that extraordinary expenses and losses, due

<sup>1</sup>Q 310, page 104.

<sup>2</sup>Minutes of Council, Land F, page 60.

<sup>3</sup>Minutes of Council, State D, page 57.

<sup>4</sup>Q 301, page 197.

<sup>5</sup>Q 305, page 116.

<sup>6</sup>Q 205, page 148. The Smith Papers constitute part of these originals. Others are in the Land Office of the Ontario Government.



to inclement weather, sickness, accidents and distance from source of supplies had led him to reimburse himself by other methods, because his allowance did not even cover his expenses. So he continued two men on the pay list two and a half months after they had been discharged, and committed certain other irregularities of a similar nature. On the other hand, he had employed others for short periods whose names and bills were not inserted in his accounts, "indeed, it had been a usual practice to charge the pay and rations of one man to cover contingent expenses, which practice was very well known to the Surveying Department." Of course, Chewett and Ridout hastened to declare complete ignorance of such practices. The Council decided that he must pay fifty pounds to straighten the accounts, further recommending that his name be struck off the list of provincial surveyors.<sup>1</sup> Doubtless the lesson was found salutary, both at the central office and in the field.

In contrast to the numerous examples of deficient business administration in the department, it is pleasant to note instances of that beneficent paternalism which Simcoe had practised and which still characterised in varying degree the decisions of Council. In May of 1805, a poor and illiterate settler named Christian Knisely asked for a grant of 200 acres under the conditions prevailing in 1795, stating that he had petitioned for it in that year, had since lost his copy of the petition, and had never asked for a patent. He had a large family and had lived on the land for many years. The Council had reference to the Surveyor-General's maps, where Knisely's name was found entered in due order. Although it was not usual to grant such a request, the Council recommended that he be confirmed in his grant in the way he desired, "in consideration of the petitioner's simplicity and ignorance of the English language, and probably of the steps necessary to be taken to obtain a grant of the land he was located on."<sup>2</sup>

The so-called "Heir and Devisee" Act was passed in this year. Its object was to give relief to heirs in cases where no patent had issued for the lands bequeathed them. The Act was to remain in force only three years. At the end of that period it was found necessary to renew it for another three years: it was slightly amended in 1812; and Parliament further enacted its renewal in 1816, 1819 and 1823.

In 1799 Russell, in Council, had ordered quarterly, instead of half-yearly, accounts of the half-fees on privileged grants,<sup>3</sup> but for some reason the change had not been put into effect. By command of the Lieutenant Governor the old order now was enforced.<sup>4</sup> The amount of the fund for the public service derived from the additional fee of the "new" regulations, while not as large as had been hoped, had helped to lessen the demand on the Home Treasury. Chief Justice Allcock reported that the land fees, added to the other revenue arising within the province, had enabled the government to discharge all public payments without drawing any funds from the military chest at Quebec.<sup>5</sup> The amount of the fund usually varied with the season, spring and early summer being the best

<sup>1</sup>Minutes of Council, State D, page 129.

<sup>2</sup>Minutes of Council, Land F, page 307.

<sup>3</sup>Minutes of Council, State B, page 339. February 28.

<sup>4</sup>Minutes of Council, April 10, 1805. State D, page 117.

<sup>5</sup>Q 303, page 91. April, 1805.

seasons for settlement. From April to July in this year it aggregated £246 19s. 5d.; from July to October, £32 5s. 4d.; from October to the end of the year £36 6s. 0d.<sup>1</sup> A portion of these sums was used in the construction and maintenance of public roads, an Act in 1804 making the necessary provision. Occasionally there were objections to the amount of the fees. A gentlemen named Vesey, who, in this year, received a grant of 5,000 acres from the Home Government, later requested that it be transferred to Lower Canada "on account of the immense fees paid upon all grants of land in the Upper Province."<sup>2</sup> But the new system at least worked to the disadvantage of speculators.

The usual difficulty in collection had been experienced with those persons who owed the second half of their land fees; usually they put off the evil day as long as possible. In order to bring pressure, the Council now recommended that such persons be notified that if the amount due still remained unpaid by June 1, 1805, they would be liable also to the additional fee of £1 19s. 4d. per lot of 200 acres. The recommendation was adopted and the usual notices were sent out. But the great difficulty in effecting measures of this sort was the impossibility of adhering strictly to them without doing injustice in individual cases. An example came to notice in July of 1806, when a settler named Benjamin Pearson came in to pay his second half of the fees. He had a certificate signed by a magistrate testifying to ample performance of settling duties—a good house and barn, thirty-seven acres cleared and cultivated, and the regulation amount of roadway cut out. He had not come to York sooner, partly because he was engrossed in his work, and partly because he had been in ignorance of the regulations limiting the time of payment until it was too late. The Council perforce had to make an exception in the case of so admirable a settler and waive all claim to the additional fee.<sup>3</sup>

In February of 1806 the Assembly presented to President Grant an address on the subject of military claimants. It contained a request for the continuance of grants to persons of that class, since it appeared that a number of them, through poverty or sickness or other cause had as yet been unable to present their claims. The President in Council responded by a proclamation announcing that all military claimants who were actually resident in Upper Canada on July 28, of 1798, and had continued so to reside might be admitted to grants in the usual way.<sup>4</sup> On the same day another address was presented, having special reference to Loyalists. It showed that some of these were precluded from applying for grants because of the expense and difficulty of a trip to York, and requested the withdrawal of that requirement. A further request was for the abolition of the additional fee. The President in Council replied by ordering that all Loyalists, save those in the Home district, might appear before the Quarter Sessions of their respective districts and there certify their standing; they might then obtain land by laying before the Council, through agents, the certificate of the Quarter Sessions. But no action could be taken in the matter of the additional fee, as all tables of fees were put into

<sup>1</sup>Q 308, I. pages 74, 112, 127.

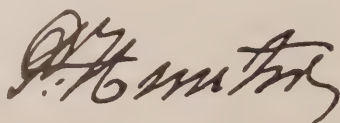
<sup>2</sup>Q 313, II. page 520.

<sup>3</sup>Minutes of Council, July 9, 1806. State D, page 242.

<sup>4</sup>Minutes of Council, March 12, 1806. State D, page 220.

effect through instructions from the Home Government.<sup>1</sup> In October of this year, another attempt was made finally to enregister all Loyalists; a proclamation was issued ordering those not yet on the list to give in their names.<sup>2</sup>

Upper Canada now had entered upon the period of political unrest, which was to characterise its history until responsible government was obtained. In the agitation led by Justice Thorpe, the Land Department came in for a large share of criticism. In his usual violent fashion Thorpe charged gross neglect, inefficiency and corruption. "Governor Hunter has nearly ruined the country," he wrote, "his whole system was rapaciousness, to accumulate money by grants of land was all he thought of."<sup>3</sup> Chiefly, he charged the Government with granting lands by favour to themselves, their families and their friends. Of the truth of this specific charge no definite evidence appears to exist. Of the charges of neglect and inefficiency a different view may be taken; as has been shown, the system in vogue had serious defects and its administration was far from perfect. But if due consideration be had for the habits of the time and the difficulties of the situation, the force of Thorpe's accusations must largely be discounted. The circumstance of the appearance of these accusations at the end of Hunter's governorship is a coincidence rather than a reason for criticism of his administration. The increasing population, the advent of radical leaders such as Thorpe, the absence of the Lieutenant Governor on military duty in Lower Canada—these factors were more important. In the administration of the department, as has been shown, Hunter made a serious and not unsuccessful effort to better existing conditions. By far the most important factor in the situation was the increasingly democratic spirit of the age. Lieutenant Governor Gore hinted at it; "There is a most insidious attempt to introduce the House of Assembly into the management and disposal of the waste lands of the Crown."<sup>4</sup> Ignorance of the relations between the Home Government and the Executive Government of the Province, well exemplified in the Assembly's request for the abolition of the additional fee, was long to continue to give rise to similar misconceptions, while the efforts of the official class to maintain the old order of things inevitably led to more insistent demands on the part of the Assembly for a direct share in the administration of the provincial lands. In other words, the period of executive freedom was at an end.

A facsimile of a handwritten signature in dark ink, appearing to read 'P. Hunter'.

Facsimile signature of His Excellency Peter Hunter, Lieutenant Governor of Upper Canada.

<sup>1</sup>Minutes of Council, March 12, 1806. State D, page 220, and Minutes of Council, May 16, 1806. State D, page 235.

<sup>2</sup>Ontario Archives, 1906, page 235.

<sup>3</sup>To Under-Secretary Cooke, January 24, 1806. Can. Arch. Report for 1892, Note D.

<sup>4</sup>To Windham, *ibid.*



## CHAPTER V.

### THE PERIOD OF POPULAR CRITICISM.

Early in the year 1807 Surveyor-General Wyatt was suspended from office. The trouble originated partly in a difference of opinion respecting the official fees. In 1804, Hunter had rescinded the Surveyor-General's percentage on survey monies because that percentage had not been sanctioned by the Home Government. In September of 1806, at Wyatt's request, the decision was reconsidered, but only to be reaffirmed.<sup>1</sup> A few days later Lieutenant Governor Gore asked the Council to report on the fees of one shilling, four and a half-pence for search, and one shilling per hundred words for official reports, both of which also had been cut down by Hunter, though he had made exception in the case of reports "wherein the judgment and discretion of the Surveyor-General are required." The Council reported that there was no good reason for reversing the order, and if it were judged proper to give the Surveyor-General any remuneration for written reports it would be much better to have it in the form of a regular allowance. Moreover, it would be difficult to differentiate between ordinary reports and those specified by Hunter.<sup>2</sup> Gore held up this recommendation for an allowance, to Wyatt's annoyance. The immediate cause of the suspension was his indiscretion in administering certain affairs of his office. A quarrel with Ridout, his chief clerk, led to a request on the part of the latter for permission to resign. Gore, being informed by reliable persons that Ridout had afforded satisfaction to the public, while Wyatt was "very young, without experience," told Ridout to remain in office, whereupon Wyatt requested Gore to permit the resignation. Gore asked the Executive Council for advice and that body confirmed his action, pointing out that there was no suitable person at hand to succeed Ridout, and a loss to the public business would ensue. Gore thereupon refused Wyatt's request, but the latter, already exasperated by the loss of his fees, foolishly dismissed Ridout on his own authority.

Again Gore applied to the Council; that body was of the opinion that removals could be effected by no authority inferior to the Crown, because the Crown made appointments and paid salaries. Encouraged by this decision, Gore demanded of the Surveyor-General "under what authority and for what cause" he had removed Ridout, but Wyatt merely cited his commission as authority and refused to specify the charges. Gore then ordered him to deliver the charges in writing, but he again refused. The Attorney-General was asked concerning the extent of the Surveyor-General's commission, and replied that it did not cover patronage. The Council then advised Gore to exert the power which the constitution had placed in his hands, and on this advice he suspended Wyatt pending a decision from the Home Authorities. Chewett and Ridout were appointed to carry on the business of the office in the meantime. Secretary Castle-

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<sup>1</sup>Minutes of Council, State D, page 284.

<sup>2</sup>Ibid, page 285.



reagh approved the suspension in June of 1807, but reserved ultimate decision.<sup>1</sup> Wyatt remonstrated in vain against his suspension, and in 1816, after Gore's return to England, sued him for libel in connection with the affair, and was awarded £300 damages.

It was more than a personal quarrel. Gore complained to the Home Secretary that Wyatt's conduct had been most reprehensible; in President Grant's administration he had taken his commission and the books of the office before the Assembly without the President's permission. During the 1807 session he had repeated the offense, and answered Gore's expostulations by asserting "that as the House of Assembly was omnipotent, it was his duty to obey it."<sup>2</sup> It is significant that Gore enlarged upon these actions; "it has been the constant endeavour of Mr. Justice Thorpe and Mr. Wyatt to persuade the House of Assembly that they were paramount in the government." This was the unpardonable sin, and to it was due the personal animus which characterised the Lieutenant Governor's accusations against the indiscreet Surveyor-General. Gore also made a specific charge of malversation, alleging that Wyatt had erased the name of a grantee from the plan in his office, for the purpose of inserting his own. Wyatt strenuously denied the charge, and ultimately was acquitted by the Home Authorities,<sup>3</sup> but it was made the pretext for continuing his suspension and thus removing the government from an awkward predicament, for Wyatt's cause had been vigorously championed by the progressive element in provincial politics.<sup>4</sup>

An increasing interest in Canadian opportunities of settlement was becoming manifest in the British Isles. Many requests for land grants in the provinces were received by the Home Government from bodies of labourers and farmers. Usually such requests were transmitted to the Provincial Governments, and by them were dealt with on the basis of ordinary free grants. Often requests for assistance in reaching the colony accompanied the petitions for land, but rarely were these granted, for the Home Government had learned by experience to anticipate a large percentage of failures in settlement schemes even of the most promising sort. The prospect of a large immigration of British subjects in itself was encouraging. A typical petition of the sort, received by Secretary Castlereagh early in 1807, came from certain Lancashire labourers headed by Thomas Garlick and Charles Grime; it asked for small allotments of land in Upper Canada, "being of opinion that Canada will be the jewel of colonial departments."<sup>5</sup> Financial assistance was requested, with a promise that "a great number more" would follow if they were thus encouraged. Not a few persons of this sort eventually succeeded in reaching Upper Canada, and one result of increasing settlement was an increase in the value of lands. In this year the assessment value of wild land was set at two shillings per acre, just double the amount set in 1803, while the value of cleared land remained at twenty shillings, probably as an encouragement to improvement. In May of this year, by way of speeding

<sup>1</sup>Q 293A, page 112. For an account of the quarrel see Q 306, page 2 et seq.

<sup>2</sup>Gore to Windham, February 27, 1807. Q 306, page 35.

<sup>3</sup>Q 310, page 274.

<sup>4</sup>The charges against him are given in the Minutes of Council for February 25, 1808, State E, page 23. His defence may be found in Q 310, page 196, to Castle-reagh, July 27, 1807.

<sup>5</sup>Q 310, page 279.

up the completion of patents, the regulations of December 30, 1802, were reiterated and ordered distributed in printed form.<sup>1</sup>

An interesting bit of frontier history came to notice in an application in October of 1807, by the Northwest Company, for a grant of land at Sault Ste. Marie. The petition stated that the company had been at great pains and expense to establish communication through British territory to the north-west country, "by which His Majesty's subjects might be enabled to carry on their trade to the interior, or Indian country, without passing through the possessions of the United States." In 1796, they had surveyed the British side of the Falls of Saint Mary, and since then had opened a road and a canal. They claimed to have obtained from President Russell "an express permission" to purchase the tract in question from the Indians, and had done so. To make it further independent of the United States they had abandoned, in 1802, the Grand Portage, their rendezvous for twenty years, and moved their establishment to the mouth of the Kaministiquia River, "through which the whole of the north-west trade is now carried on" over a route discovered by themselves. In return they asked for a grant of the land lying north of the straits of Saint Mary, between Lakes Superior and Huron.<sup>2</sup> But the Council merely reported themselves unable to move in the matter, having been expressly forbidden to grant this tract without special reference to the Home Government; they offered, however, to refer it to the proper authorities. At the same time they remarked that no purchase of the tract by the Government from the Indians was known to them, and they further commented on the almost exclusive monopoly of the route to the north-west country, which such a grant would confer. The company did not renew the application, and there the matter ended so far as the Provincial Government was concerned.

Gore was beginning to experience some of the difficulties peculiar to his office. In February of 1808 he complained to the Home Government that, by reason of the advanced age of Russell and Grant, and the retirement of Shaw, the Executive Council often was inadequate to the dispatch of public business. But appointment of new members came very slowly through the official channels, and delay was the more vexatious in view of the attacks being made upon the administration. This year saw the publication of "A View of the Political Situation of the Province," a pamphlet by John Mills Jackson, in which he severely criticised the work of the government under Gore.<sup>3</sup> In the main, his charges were exaggerated and without adequate proof, but it focused popular attention on the weak points of the provincial administration; not only so, but the charges were taken up by critics of the Home Government and resulted in a motion relative to Gore's work in Upper Canada. The Home Secretary requested an answer to the charges, and Gore was forced to spend a number of most unhappy hours composing a detailed defence of his actions.

Jackson's most serious charge was that of abuse of the trust of granting the waste lands of the Crown. He claimed perversion of the regulations governing privileged grants, to the detriment of Loyalists and military

<sup>1</sup>Minutes of Council, May 1, 1807. Land G, page 327.

<sup>2</sup>Minutes of Council, Land G, page 394.

<sup>3</sup>This pamphlet is found in a number of Canadian collections, e.g., Ontario Archives or Toronto Reference Library.

claimants. He accused the officers of the Department of bestowing large grants upon the families of others in office, and of expediting the patents of such privileged persons as would pay the survey fees. Gore denied any departure from the official regulations. On the charge of expediting patents he admitted knowledge of one instance of the sort, but pointed out that in any case the fees were credited to government. The admission was damaging, for it showed the possibility of other instances not within his knowledge, with an added possibility of personal corruption on the part of under-officials. Gore denied anything extra-legal in the giving of lands to the families of officials, for such had been the established custom since the administration of Simcoe, and in no case, other than that of Executive Councillors, had more than 1,200 acres been granted to any one person. During his own administration no grants of this sort had been bestowed.<sup>1</sup> Jackson's criticism of the matter of "family lands" was useful, however, for although the custom may have had some value in the early days of the province it had suffered abuse as the numbers of the official class increased, while the conditions under which it originated had disappeared.

The matter of collecting back rents on leases of reserves came up for discussion in July of 1809, and it was decided to order the sheriffs in the various districts to post notices at every court house during the next assizes, to the effect that unless lessees paid their arrears on or before the first day of the new year legal steps would be taken to recover them, and the leases would be cancelled.<sup>2</sup> Another troublesome matter was dealt with in December of the same year. Reports had come to the Surveyor-General's office as early as 1800 to the effect that private persons were cutting timber without license on reserves in various parts of the province. The Solicitor-General had taken legal measures against them, but the evil grew until governmental action became imperative. So now a proclamation was issued, stating that all persons cutting timber on Crown lands without license would be prosecuted and the timber would be seized and sold for the benefit of the Crown. Such cutting of timber in future would be regarded as a misdemeanour, punishable by fine or imprisonment. For a first offence the punishment was set at £20 fine or twelve months' imprisonment; for a second offence, £30 or eighteen months; for the third offence, seven years' transportation.<sup>3</sup>

In December of 1810 Thomas Ridout was formally installed in the office of Surveyor-General. Early in the succeeding year he applied to the Lieutenant Governor in Council for an increase in his fees of office, urging as a reason "the very great and severe duties" involved in making searches for the public, and citing the five-shilling fee for search charged in the Castle Yard at Dublin. Unlike the less fortunate Wyatt, his request was granted, the Council finally placing the fees of search at one shilling and three pence for each township map examined, except on new orders for land, and one shilling, three pence for each certificate of search when required.<sup>4</sup> A few days later a change was made in the rental of reserves. On all future leases there was set a rate of fifteen shillings per lot for the

<sup>1</sup>Gore to Castlereagh, February 1, 1810. Q 313, I, page 198.

<sup>2</sup>Minutes of Council, State E, page 174. Copy on page 111.

<sup>3</sup>Ontario Archives, 1906, page 248.

<sup>4</sup>Minutes of Council, State E, page 344.

EXECUTIVE COUNCIL OFFICE.

York, August 7th, 1809.

**NOTICE** is hereby given, that unless the Lessees of the Crown and Clergy Reserves, shall pay the arrears of Rent due by them respectively, on or before the first day of January next, that legal steps will be forthwith used to recover the same ; and that measures will be taken for the cancelling of the **Leases**.

By Command of His Excellency the  
Lieutenant Governor in Council.

JOHN SMALL,

Clerk of the Executive Council.

N. B.

Esquire,

Sheriff of the    is authoriz-  
ed to receive and grant Receipts for the Rent, for  
the several Leases within his District.

JOHN SMALL,

C. E. C.



first seven years, thirty shillings for the second seven years, and forty-five the third. An advance deposit of £1 12s. 6d. cy. was required on each lease before the Order in Council would issue.<sup>1</sup> In this year the Assembly again raised the assessment value of wild land: this time to four shillings per acre, cultivated land continuing to be valued at twenty shillings, as formerly.

With the year 1812 came the outbreak of war between Britain and the United States, with the consequent suspension of most of the land business in Upper Canada. In the following year two incidents of interest to the Land Department occurred. One was the capture of York by the enemy. As has been related, the official records already had been transferred to a place of safety, but the contents of the provincial treasury did not escape so easily. The money, amounting to some £2,000, had been concealed, but "the enemy having threatened to destroy the town unless it were produced, it was given up."<sup>2</sup> In common with other branches of the public service, the land offices suffered a temporary handicap from the loss of these funds. The other incident was the announcement by General Sheaffe of his intention to recommend the incorporated militia for grants of land as a reward for faithful service. Secretary Bathurst approved the measure, but cautioned Sheaffe against making grants of more than fifty acres to each private soldier, with proportionate amounts to officers.<sup>3</sup> Half fees were to be paid on all grants of this nature. Another incident of historical note in which the Lands Department perforce took an active interest was the bestowal upon the immediate relatives of the late General Sir Isaac Brock of a grant of 12,000 acres. It was subject to the usual reservations and other conditions of free grants.<sup>4</sup> The gift, originated in an address by the Assembly to the Prince Regent. Four years later Mr. John Brock, son of Sir Isaac, came to Upper Canada to complete the details of securing the land.

In its relation to the Crown Lands Department of Upper Canada the war achieved two main results. The first was negative in character, and may best be set forth in Secretary Bathurst's injunction to General Drummond: "You will not in any case grant lands to the subjects of the United States, and use your best endeavours to prevent their settling in either of the Canadas until you shall hear further from me."<sup>5</sup> This prohibition originated from military rather than political motives, but much political agitation was to ensue before a solution of the "alien" problem it involved was reached. The law against aliens had long been known in America. In 1740 an Imperial statute stipulated as the conditions of naturalization in any colony seven years of residence and the taking of the oath of allegiance. In 1790, United States citizens were allowed to take up lands in Canada merely upon taking the oath of allegiance and an oath of intention to settle in the country, and a stream of immigration resulted. Commissioners were appointed to administer the oaths. It is to be noted, however, that the seventeenth clause of the Instructions to Dorchester as Governor of Upper Canada (1791) strictly forbade any

<sup>1</sup>Minutes of Council, State E, page 346.

<sup>2</sup>Sheaffe to Bathurst, May 13, 1813. Q 317, page 122.

<sup>3</sup>Q 293A, page 228.

<sup>4</sup>Drummond to Bathurst, June 13, 1814. Q 318, I, page 103.

<sup>5</sup>Bathurst to Drummond, January 10, 1815. G 53, I, page 87.

local measures for the naturalization of aliens within the colony. In 1795 the Council recommended to Simcoe a strict enforcement of the requirements respecting the taking of the oaths by aliens before receiving grants.<sup>1</sup> In March of 1814 a provincial statute declared that all persons holding land in Upper Canada who had come originally from the United States and who voluntarily had returned thither without license after July 1 of 1812, should forfeit their lands.<sup>2</sup> This remained in effect, with minor changes, for fifteen years. In 1815, as a result of the instructions from Bathurst, the commissioners for administering the oaths to United States settlers were forbidden to do so save by special license from the Government.

The result of this measure was marked. Land was Upper Canada's sole source of wealth, and new settlers were the only buyers. The majority of these settlers came from the United States, and this circumstance, added to the after-effects of the war, brought about a certain amount of financial depression. Especially were the land speculators pinched, and a number of the more influential among them brought the matter to the attention of the Assembly. The latter resolved itself into a Committee of the Whole to consider the state of the province with respect to a number of subjects of popular discontent, chief of which was the exclusion of United States immigrants. An address to the Lieutenant Governor was prepared, but before it had been completed Gore prorogued Parliament. The sixth, seven and eighth resolutions of the address are of special interest. They set forth the immense tracts of uncultivated land in the province, with the loss of valuable settlers through discouragement of persons from the United States, and asked for the removal of the excluding orders. It was claimed that under the existing statutes concerning aliens the Lieutenant Governor had no authority to forbid the administering of the oaths, and that United States citizens could legally settle and hold lands in Upper Canada. Gore, who strongly favoured the exclusion of United States settlers, considering them dangerous in the event of another war, asked advice of Bathurst, who referred the question to the law officers of the Crown. Their opinion was that United States citizens coming into the province were entitled to have the oaths administered, but were not entitled to hold land merely upon taking the oaths, a residence of seven years being indispensable. Bathurst forwarded the decision to Upper Canada, and ordered the seven years' residence clause promulgated throughout the province."<sup>3</sup>

Naturally this caused considerable apprehension on the part of persons, formerly United States citizens, who already had received grants of land, of which the status now was rendered questionable because they had not complied in full with the naturalization law as now interpreted. It was increased by the decision rendered in the case of Bidwell, a former United States citizen, who, in 1822, was elected to Parliament. The law officers of the Home Government decided that Bidwell was an alien, and hence ineligible as a member of the Provincial Legislature.<sup>4</sup> The Home Government, however, saw the necessity for some measure to restore confidence, and intimated that something would be done.

<sup>1</sup>Minutes of Council, State A, page 302. August 14.

<sup>2</sup>Statutes of Upper Canada, 1791-1831, page 228.

<sup>3</sup>Bathurst to S. Smith, November 30, 1817. Q 319A, page 122.

<sup>4</sup>Bathurst to Maitland, November 30, 1824. Q 337A, page 197.

The disposal of the estates of "traitors" who had returned to the United States was taken up in 1816. A minute of Council directed that the proceeds arising from the confiscation of such estates were to be applied toward compensating the losses incurred by loyal persons during the war. Commissioners assembled at York to determine the amount of the losses, and in 1818 a permanent commission was set up by provincial statute, in which the confiscated lands were vested. But the delay and difficulty involved in the process of valuation and compensation soon became obvious, and the Treasury Lords suggested to Bathurst that it might be possible satisfactorily and conveniently to remunerate losses of this sort generally by grants of land.<sup>1</sup> But, as matters turned out, the claims were settled in money instead of land. The balance not covered by the sales of estates was met by joint remittances from the Home and Provincial Government revenues.

The second and positive result from the war was an influx of immigrants from Britain, assisted to some extent directly by the British Government. The reasons for this movement were complex. The war had brought Canada more directly to the notice of those in Britain. At the close of the Napoleonic wars social and economic stress led many to emigrate to the colonies on the chance of bettering their condition. The Government favoured such emigrations as a means of relieving discontent and also, in the case of Canada, as a means of defence against future aggressions on the part of the United States. There was also a minor consideration, though one of practical importance. The restoration of peace rendered it necessary to send to Canada a number of ships to remove the British troops which had been serving there. If free passage were given in these vessels, a considerable amount of emigration would be diverted from the United States to Canada.

Accordingly an announcement to this effect was promulgated, provisions and tools being added to the free passage, with a grant of 100 acres upon arrival and free rations for a limited time.<sup>2</sup> To obviate the possibility of persons using this offer as a means of reaching the United States a cash deposit was exacted, to be repaid at the end of two years upon settlement being proved. The amount required in the case of males over sixteen years of age was £16, with £2 2s. for each female who was the wife of a settler. From persons under sixteen years of age no deposit was required. Settlement was to be under the direction of the Commander of the Forces and his agents. The Surveyor-General was required to report to him from time to time such grantable lands as might be required, and the Executive Council was to take the usual steps to issue valid patents.<sup>3</sup> After receipt of the despatches containing these directions, the Council henceforth was to limit the amount of the grant for all ordinary settlers to 100 acres, instead of 200 as formerly.<sup>4</sup> This measure was put into effect immediately, and, as a result, the customary size of a farm came to be regarded as one hundred acres only, a change indicative of the increase in settlement.

<sup>1</sup>Q 324, II, page 253.

<sup>2</sup>Bathurst to Drummond, March 20, 1815. G 57, I, page 92.

<sup>3</sup>Minutes of Council, November 4, 1815. State F, page 228.

<sup>4</sup>Bathurst to Drummond, G 57, I, page 92.

Soon a request came from General Drummond, Commander of the Forces, for information as to a suitable district in which to place the new settlers. The number anticipated by the British Government did not exceed four thousand, and Gore decided to carry out with them a plan, already in his mind, of a settlement along the Rideau River. The idea was military in conception, the purpose being to provide a waterway for transportation between Montreal and Lake Ontario beyond striking distance of the United States frontier. The Ottawa and Rideau Rivers offered a feasible route, and a strong settlement of loyal subjects in their vicinity would facilitate the work of despatching troops in wartime. At first Drummond rejected this proposal in favour of more diffuse settlement wherever the inclination of the settlers might suggest, but eventually he fell in with it. The land actually bordering the Rideau River already had been surveyed and settled in part, so Gore opened up a range of townships farther to the west, called Bathurst, Drummond and Beckwith.<sup>1</sup> These townships, in due course, were settled by the reduced troops and other emigrants brought over in the Government transport ships. The trouble over selecting the site, to which was added a lack of surveyors, delayed the actual settlement to such an extent that it really began only in the spring months of 1816.

But progress was not as smooth as might be inferred from the circumstance of governmental assistance. The difficulty lay in a division of authority. All previous settlements of emigrants or disbanded troops had been effected by the Upper Canada Government alone; this one was under the superintendence of the Deputy Quartermaster-General and his assistant, both of whom lived three hundred miles away in Quebec, only occasionally visiting the settlement. The friction between the officials appointed under this authority and those acting under orders from the Provincial Government created an uncomfortable situation for the settlers, and in 1818 Gore asserted, in a private letter, that the settlement was disliked by emigrants for that reason.<sup>2</sup> Certainly this lack of harmony provided the opponents of the Administration with substantial topics for criticism. One of the chief points of difference was the method of survey to be used. The Surveyor-General had begun the work through his deputies, but the latter deviated from the established regulations of the Department by command of the agents appointed by the Commissary General to locate settlers. If the instructions given by these agents had been followed, it would have taken as long to survey one lot of 200 acres as under the usual plan would suffice for five lots, or 1,000 acres, while the cost would have been tremendously increased.<sup>3</sup> These commands, moreover, had been given without reference to the Surveyor-General's Department. Minor irregularities in the keeping of survey accounts further perplexed the provincial officers.

Another difficulty arose in the matter of finances. It had been customary for the Upper Canada Government to draw on the Home Government, through the military chest at Quebec, for funds to make up any deficit caused by the civil expenditure of the province. The expense of the Rideau surveys now fell to the province as its share in the undertaking.

<sup>1</sup>Beckwith was Quartermaster-General. Q 320, page 42.

<sup>2</sup>Gore to Gordon, January 18, 1818. Q 324, I, page 112.

<sup>3</sup>Ridout's Report, Q 322, I, page 31.



and Gore found it necessary to request an advance from the military chest. Sherbrooke sent £2,500 in July of 1816, but intimated that further supplies from that source were uncertain, as it was not known whether the Home Government would continue so to replenish the civil chest at York, he had referred the point to the Treasury Lords, and could take no further action until instructions were received.<sup>1</sup> Gore then suggested that the work of survey be left entirely in the hands of the military authorities, who thereby would become responsible for the financing of it. But Sherbrooke preferred to give the Provincial Department an absolutely free hand as to the mode of survey, and gave orders to his agents to cease their interference.

The financial problem still troubled Gore, who had told Sherbrooke in a personal interview that it would be beyond his power to pay for the surveys.<sup>2</sup> He now informed him that the Upper Canada Government soon would have to withdraw its assistance altogether because of lack of funds. Meanwhile letters had come from Bathurst urging still greater retrenchment, and Sherbrooke was forced further to contract his own assistance to the settlements. Gore was anxious to borrow from the military chest, the loan to be repaid later by the province, but even this assistance was not forthcoming. Whereupon, by advice of his Council, he ordered the Surveyor-General to stop all surveys and dismiss all the surveyors, until funds should accumulate in the treasury.<sup>3</sup> It was later noted that not over a thousand settlers had required locations, for which number sufficient lots already had been surveyed. Sherbrooke had expected the Upper Canada Parliament to come to the rescue, but when he saw that nothing would be done in that quarter, he announced his willingness to negotiate the loan, as Gore had suggested. But he requested that the Land Office have everything in readiness so that the settlers would at once receive their patents upon producing the proper certificate from the military officer in charge.<sup>4</sup> So the matter was settled, but the experience was salutary, for no further attempts at military settlements were made in Upper Canada by the Home Government. In 1820 a letter from Bathurst announcing this policy was transmitted by the Governor General to Lieutenant Governor Maitland.<sup>5</sup> In 1822 orders were given for the gradual discontinuance of all governmental assistance to the settlements.<sup>6</sup> In 1825 the total population of the several townships was estimated at 12,000 persons.

Perhaps the most interesting and certainly the most successful part of the whole enterprise was that known as the Perth settlement. Its membership was purely civilian in character. In 1814 Bathurst had written Sir George Prevost in Lower Canada with reference to his intention of encouraging a number of the Scottish peasantry of Sutherland and Caithness to emigrate to Upper Canada. The Home Secretary considered it a matter of the highest importance that persons of known loyalty should be placed in the province to counterbalance the disaffected inhabi-

<sup>1</sup>Sherbrooke to Gore, July 17, 1816. Q 322, I, page 20.

<sup>2</sup>Ibid, page 54. November 11.

<sup>3</sup>Gore to Sherbrooke, December 16, 1816. Q 322, I, page 64.

<sup>4</sup>Ibid, page 104.

<sup>5</sup>Q 325, I, page 160.

<sup>6</sup>Q 331, page 139.

taints, and this consideration was a governing factor in the project. A proclamation was posted in Edinburgh in February of the succeeding year, setting forth the special terms upon which lands might be obtained.<sup>1</sup> A lot of 100 acres was promised to each family immediately upon arrival, with 100 acres to each male child upon coming of age. For the first six or eight months rations would be given from the public stores, with further aid in special cases. Implements would be supplied at low cost. Several settlers desirous of being together would be allotted lands as nearly contiguous as possible. The Government also would provide salaries for a properly accredited minister and schoolmaster if these accompanied the immigrants. Upon embarking for Quebec a cash deposit of the usual amount would be required of each settler, returnable at the end of two years, as in other cases. Persons with more capital would be granted land in proportion, while teachers and ministers would receive 100 acres each. On these terms the pioneers of Perth Settlement came to Upper Canada, chose a site in part of Drummond and Bathurst townships, and founded a prosperous colony.

The year 1815 brought substantial relief to the unfortunate Provincial Secretary, William Jarvis, in the form of a warrant on the Home treasury for £1,000.<sup>2</sup> Jarvis had been nominated to his office by Simcoe in 1792. He had been informed at the Treasury that the business of preparing patents and affixing the Seal was very lucrative.<sup>3</sup> When the officers of the Land Department discovered that their fees by no means created the income they had anticipated, the case of the Secretary was pointed out as typical of the extreme hardship which resulted. In 1799 a change in the form of patent, made at Hunter's orders, had caused Jarvis to lose heavily on the forms already in stock, purchased at his personal expense. In 1800 the order to make out all future deeds on parchment increased his expenses considerably, and in 1807 the number of these deeds remaining in his office uncalled for totalled 1,586, representing an expense of over £475, for which he had received no compensation.<sup>4</sup>

The irritating part of the business to Jarvis was the fact that he alone of all the land officers had to pay expenses out of the fees received; the Surveyor-General, for example, was granted an allowance for stationery, clerks and other incidentals. On all privileged deeds the Secretary lost heavily, and by 1807 he estimated his deficit at £715. A committee of Council, to which the Lieutenant Governor referred his petition for remuneration, urged payment of these losses from the public revenue, and recommended an additional fee on all future patents for the Secretary's sole benefit.<sup>5</sup> Nothing was done, however, and in 1809 Jarvis again petitioned. This time the Council recommended that he be repaid out of the fund for the public service arising from fees on land grants, and that in future four shillings currency be deducted from the gross fee to the land officers as a body, and given to the Secretary on each deed.<sup>6</sup> Assistance of some sort was indeed necessary. In a private letter Jarvis

<sup>1</sup>Q 328, I, page 143.

<sup>2</sup>Q 319A, page 10.

<sup>3</sup>Q 352, page 279.

<sup>4</sup>Memorial by Jarvis, 1807. Q 306, page 187.

<sup>5</sup>Report of Committee, March 20, 1807. Q 306, page 185.

<sup>6</sup>Minutes of Council, August 7, 1809. State E, page 174.

stated that his total loss through patents in ten years had amounted to £1,500; that he had strained his credit to support his office, "and must, if speedy and effectual relief is not afforded, sink under the pressure of so large a debt."<sup>1</sup> Fortunately the Home Government decided to do something; £1,000 was granted in 1815 as related, and eventually his son and successor, William Jarvis, Junior, received about £2,000, in consideration of the father's losses.<sup>2</sup>

The matter of grants to the incorporated militia was one of wide popular interest, and delay in settling it was bound to be resented keenly. Gore reported to the Home Secretary in October of 1815 that the permission to make grants had not been used, "as no application had been made for it."<sup>3</sup> At the same time he pointed out that the size of grant was very small as compared to the former settler's grant of 200 acres, and would appear to the volunteers to be "an invidious distinction." He asked permission to increase it to the size of the usual military grant. The Council delayed action pending an answer to this request, and in October of 1818 the Assembly presented an address to Lieutenant Governor Maitland on the subject, but he could give no explanation other than that he was awaiting instructions. In December of the same year despatches at last came from the Home Government sanctioning the grants as proposed by Gore, but imposing a condition of actual residence and cultivation.<sup>4</sup> Unfortunately by this time the gift had largely lost its grace, and a feeling of irritation was induced between the Assembly and the Government which served to aggravate the political troubles of the time.

Certain minor enactments concerning lands passed the Council in 1815. In March the standing order against granting lands to officers on service was dispensed with, at least to the extent of 200 acres, in the case of such as expressed an intention to settle in the province.<sup>5</sup> In the same month an effort was made to lessen absentee ownership in the town of York by means of a regulation requiring that all persons having Orders in Council for lots in that town should take them out within one month's time, under pain of forfeiture. In December the fee on grants of leases was ordered paid by the lessee exclusive of the rent reserved, instead of having it deducted from the growing rent as formerly.<sup>6</sup> A more important measure was that passed by the Assembly with respect to the provincial assessment. As the system stood, the assessors called on householders for a list of rateable property, which included the proportion of wild to cultivated land. But in so large a territory it often was impossible to ascertain the precise ownership of a large part of the landed property, especially when not in use. Through the negligence of some proprietors and the dishonesty of others much land was not reported, and hence escaped the tax. Another defect lay in the circumstance of the taxes being payable in the district where the householder resided, and not in the district where the land lay, and where the money usually was most needed. So an attempt was now made to improve matters by ordering

<sup>1</sup>To Brickwood, September, 1809. Q 312, II, page 376.

<sup>2</sup>Q 373A, page 13.

<sup>3</sup>To Bathurst, October 17. Q 319, page 117.

<sup>4</sup>Bathurst to Maitland, December 9, Q 319A, page 155.

<sup>5</sup>Minutes of Council, Land I, page 241.

<sup>6</sup>Minutes of Council, December 30. State F, page 243.

each householder to specify in which district his land lay, the accounts to be made up between the various districts.

Fees and rentals were further dealt with in 1816. In January the fee on the new 100-acre farm lots was fixed at £4 9s. 4d., of which £2 18s. 8d. was to be divided among the patent officers, as in the case of 200-acre grants.<sup>1</sup> In December, "in order that one uniform rent may be received for all licenses of occupation granted," leases expiring prior to January might be renewed at a rate of £1 5s. cy.<sup>2</sup> A very necessary Act was passed by the Legislature in March for the relief of persons holding lands in Niagara. The records there had been burned by United States troops. This Act granted £4,000 for a commission to reascertain titles.

A number of regulations fixing the status of several classes of applicants with respect to land grants was passed in this year. In January a despatch from Bathurst limited naval grants to persons who had served three years on the Great Lakes, such grants to be resumed by the Government if not cultivated within a limited time.<sup>3</sup> At first the land officers charged the usual fees on patents for these lands, until a further despatch from Bathurst ordered gratuitous deeds, as in the case of military grants.<sup>4</sup> Artificers belonging to the naval establishments were included in the list of those qualified to receive grants of this nature.<sup>5</sup> The relative standing of military and naval officers in the matter of land grants was determined as follows:<sup>6</sup>

Field Marshal .....	Admiral of Fleet
General .....	Admiral
Lieutenant-General .....	Vice-Admiral
Major-General .....	Rear Admiral
Brigadier-General .....	Commander with Broad Pendants and First Captain to the Commander-in-Chief
Colonel .....	Captain after Three Years Post
Lieutenant-Colonel .....	Other Post Captains
Major .....	Commander
Captain .....	Lieutenant, Master, Surgeon and Purser

Gore was at a loss in the matter of reduced officers coming into the province after being disbanded outside of it, as the regulations applied only to officers disbanded within Upper Canada. He favoured granting them lands on the same terms as other military claimants, and Bathurst eventually gave his consent.<sup>7</sup> In February of 1817 a half-pay Surgeon to the Forces applied for a grant, whereupon "the Council, desirous to encourage the actual settlement of skilful medical characters in the colony, recommended a grant of 800 acres on fee of 1804"<sup>8</sup> In July of 1816 the Council had dealt with a person who needed no encouragement. The Bishop of Quebec had been promised a grant of 12,000 acres for his family, and the grant was completed subject to the usual conditions and fees.<sup>9</sup>

<sup>1</sup>Minutes of Council, January 6, 1816. State F, page 245.

<sup>2</sup>Ibid, page 298. December 18.

<sup>3</sup>Minutes of Council, Land I, page 175.

<sup>4</sup>Bathurst to Sam Smith, September 5, 1817. Q 319A, page 100.

<sup>5</sup>Bathurst to Gore, August 6, 1816. G 58, page 91.

<sup>6</sup>Minutes of Council, Land J, page 221.

<sup>7</sup>Bathurst to Gore, July 31, 1817. Q 319A, page 92.

<sup>8</sup>Minutes of Council, February 19, 1817. Land J, page 74.

<sup>9</sup>Q 319A, page 48.



Early in 1816 the Council dealt with a charge brought against the family of Reuben Green, of Woodhouse (London district), to the effect that as late as January 5th of that year, they had obtained lands as the children of a Loyalist, although Green himself had joined the enemy in the late war, had burned and plundered the house of Captain Francis, killing him in defence of it, and later had been himself killed in arms against His Majesty. It was unanimously recommended that in future no application for land as child of a Loyalist be received without a magistrate's certificate that the parent retained his loyalty in the late war. If a son, he would be required to specify his own loyalty; if a married daughter, then the loyalty of her husband. A form of certificate was made out for this special purpose.<sup>1</sup> Another preventive measure, passed in April of 1817, dealt with a practice often charged against the Administration by its critics. It forbade the granting to any officer in the executive Government of land previously located but about to be declared vacant by the Executive Council, no matter what prior claims on such land the officer might have.<sup>2</sup> Whether or not this regulation was the result of attempts on the part of Government employees wrongfully to acquire lots, at least it was a wise one, in that it precluded any dishonest use of the superior information concerning land matters possessed by certain of the Government offices.

Not long after the war had ended, the British Consul at New York began to receive a great number of requests for information concerning settlement in Canada. In July of 1816 he wrote Lieutenant Governor Gore asking what encouragement would be given to British subjects coming as settlers to Upper Canada from New York. Gore, in reply, announced his willingness to receive them, provided there was no mistake as to their being British subjects, but he could not state definitely upon what terms they might obtain lands. Buchanan, the Consul, was anxious to obtain favourable terms in order to attract to Upper Canada not only those emigrants specially interested in that province, but also those who daily were applying to him for means of returning to Britain. Secretary Bathurst had been informed of this correspondence, and approved Buchanan's plan; he further instructed Gore to grant persons of this class 100 acres each on the same terms as to ordinary settlers.<sup>3</sup> Accordingly Buchanan sent on a large body of emigrants, principally from the north of Ireland, including some who had resided for several years in the United States. The latter Gore refused to accept, in spite of Buchanan's recommendation. Unfortunately the Consul, on his own authority, had held out to these prospective settlers hopes of free patents, provisions and employment on the public works of the province. Bathurst, foreseeing the harm this would do to Upper Canada as a place of settlement, informed him that sufficient emigrants already had been forwarded, and requested him not to send any more.<sup>4</sup> He then instructed Gore to settle those already arrived, and to give them provisions and implements, adding that the Crown would pay half the fees on their patents.<sup>5</sup>

<sup>1</sup>Minutes of Council, January 27. State F, page 246.

<sup>2</sup>Minutes of Council, Land J, page 177.

<sup>3</sup>March 4, 1817. Q 319A, page 73.

<sup>4</sup>Ibid, page 89.

<sup>5</sup>July 31, 1817. Q 319A, page 92.

In the autumn of 1816, as a result of a long and involved contest over the ownership of a salt spring in County Lincoln, a regulation of some importance to new settlers was formulated by the Executive Council. The affair began in 1797 with the grant of a twenty-one-year lease of the Salt Springs of Fifteen-Mile Creek, Louth township, to the Reverend William Addison, at a rental of five shillings currency "for such time as he shall continue to officiate as a clergyman of the Church of England at Niagara."<sup>1</sup> Six hundred acres of adjacent land were reserved to supply fuel for the salt works; this land already had been granted by Land Board certificate to one Angus McDonell, but he obligingly surrendered his claim upon being informed of the Government's intention. Simcoe awarded the lease to Addison as an addition to his scanty income, and, on leaving the province not long afterwards, instructed Russell to put him in full possession. The demand for salt does not appear to have been great, "the whole income being a dollar a week, and that but poorly paid,"<sup>2</sup> and in 1802 Addison rented part of the land to a tenant by name of Solomon Moore. The latter remained on his portion for three years, made certain improvements, and then wished to purchase it outright. Now McDonell, in some mysterious way, had come to believe that eventually he would receive a regular title to the land, and with him Moore bargained for it against the time when a patent should issue, meanwhile continuing to reside thereon. After several years had passed McDonell abandoned his claim to a title, whereupon Moore petitioned the Lieutenant Governor for a lease or grant. Later on he claimed that Gore verbally assured him it would be all right, and, as a result, he had continued his improvements, although no further action was taken at the time.

But in March of 1814 a grant of 1,200 acres, including the salt spring, was made at the request of General Drummond, who was then in charge of the Government, to his secretary, Captain Robert Loring.<sup>3</sup> The Surveyor-General had reported these lands grantable, so the Council anticipated no trouble. In the meantime a fresh complication had arisen. A man named Flummerfeldt had purchased certain lots in the neighbourhood from the Honourable Robert Hamilton, of which one was taken by error in the tract reserved to supply the salt spring. In 1809 the error was discovered, and Flummerfeldt petitioned for permission to retain the lot. Gore allowed him to do so, substituting certain adjacent land in lieu thereof, but he left Upper Canada before the arrangement was concluded, and Flummerfeldt sent in another petition to General Brock. The latter referred it to his Council, who forbade the occupation of the reserved lot, not knowing of Gore's arrangement concerning it.

When news of the grant to Loring reached Flummerfeldt and Moore the trouble began. Loring made Flummerfeldt pay for his lot at the rate of five dollars per acre, but Moore again sent in a petition, stating that he had now worked on the land for thirteen years, and had a family of twelve children to support. Drummond would not permit the petition to be read in Council, so it was forwarded to Secretary Bathurst, who demanded of Gore, now returned to Upper Canada, an explanation of the whole affair. Gore referred it to his Council, who added a fresh bit of

<sup>1</sup>Minutes of Council, August 14, 1797. State B, page 80.

<sup>2</sup>Minutes of Council, April 14, Land D, page 378.

<sup>3</sup>Minutes of Council, Land I, page 229.

information to the effect that Addison had sent in a petition for 600 acres of these lands for his two daughters as recompense for losses sustained in conducting the salt works, "which petition ought to have been disposed of previous to granting them to any other person." They further added that Loring was cognizant of all the conditions of the case, and recommended that Moore and Flummerfeldt be recompensed.<sup>1</sup>

The result of this report was a letter from Bathurst to Gore, instructing him to inform Loring that it would be most consistent with his own character to surrender the grant in question and repay Flummerfeldt the five hundred dollars. Should he decline to do so, Gore was authorised to prevent the alienation of the land. To prevent repetition of this sort of thing, Gore was ordered to see to it that no location be taken in future without first being referred to the Surveyor-General to report thereon whether it were already located, or if there were any other objection. "You will also take particular care that every grant of land shall contain a distinct provision to render its alienation for a limited period from the date of the grant a cause for its immediate resumption by the Crown."<sup>2</sup> The Council accordingly passed a regulation to that effect, fixing the "limited period" at three years. Of the utility of this measure there can be little doubt; it was a check upon speculators and migratory settlers alike. Yet it aroused not a little criticism, for many persons who already had sold lands of this sort on partial-payment terms met with loss.

The incident did not close with the passing of this regulation. Loring refused to do as ordered by Bathurst until given an opportunity to clear himself. Bathurst gave him the opportunity, and sent him copies of all the documents bearing on the case, although it was unusual to do so.<sup>3</sup> Loring defended himself vigorously, asserting that it was at Flummerfeldt's desire that the land was sold, that five dollars per acre was an extremely low price, that he had offered to have the value of Moore's improvements determined and pay him the amount, that the Surveyor-General had not informed him of the difficulties of the situation, and with other arguments of a similar nature. Drummond then wrote Bathurst vouching for Loring's character, services and ancestors, and construed the official despatches into a criticism of his own conduct in letting the land go to his secretary. Bathurst hastened to assure him of the contrary; Drummond apologized; of course, Bathurst then wrote Loring, admitting that there was nothing to prevent the confirmation of the grant; but it would have been more gratifying to himself had he been able to assure that gallant officer that there appeared to be nothing at all objectionable in the proceedings. Flummerfeldt, not possessing the requisite ancestors, was deemed to have received proper treatment, but it was considered indispensable that Moore receive compensation for the improvements, as valued by any competent person he might name.<sup>4</sup> Loring graciously acquiesced in this arrangement, and, after effecting it, asked Bathurst to exonerate him of all blame. This was easily done, and thus everything—supposedly—ended happily.

<sup>1</sup>Minutes of Council, July 18, 1816. Land I, page 362.

<sup>2</sup>Bathurst to Gore, October 1, 1816. G 58, page 102.

<sup>3</sup>Bathurst to Loring, March 10, 1817. Q 319A, page 74.

<sup>4</sup>September 30, 1817. Q 319A, page 111.

But the records bear witness to one dissenting voice. The Executive Council was by no means pleased to have its opinion thus so lightly set aside, and in a formal minute a request was made that Loring's explanation, undoubtedly the cause of Bathurst's change of view, be placed on record along with the Home Secretary's decision, as a means of properly explaining the whole affair. In the opinion of the honourable members the question was one between the Executive Government and public opinion. It was known all over the province that Gore had recommended to Council the grants of these two men, and that the Council had long deliberated thereon. Obviously a sensation must have been caused by the granting away of the land to the President's private secretary, and the proper way to restore public confidence was by a public enquiry in the form of legal proceedings to cancel Loring's grant.<sup>1</sup> The Home Government received this opinion without comment, and filed it away with many others of like nature in what presumably is a large and very dusty room. The affair as a whole is instructive as exemplifying not only the more complicated sort of questions with which the Council had to deal in its capacity of Land Board, but also the possibilities of prolonged and cumulative trouble inherent in a comparatively minor error on the part of the land officers.

Before leaving Canada in the summer of 1817, Gore left on record his opinion of the system of free grants.<sup>2</sup> "The greatest blessing the King could have conferred on the colony of Upper Canada after giving it being," he wrote, "would have been to put an end to all gratuitous grants of land after the original settlers had been rewarded. The long perseverance in granting lands for the mere fee has diminished to the sum of that fee the value of the gratuitous grant to the Military Claimant and Loyalist, and has introduced a dangerous population and afforded no revenue. . . . It is, however, needless to complain, because it is too late to afford a remedy for the past. The sooner a stop is put to future grants, the sooner will the Crown and clergy reserves bear an increased rent and afford a revenue worthy collecting."

An urgent call for funds to supplement the provincial revenue early in 1817 resulted in regulations with respect to fees. In March it was ordered that all persons not entitled to patents free of expense who had obtained orders for grants between December 22, 1797, and July 6, 1804, and who had not complied with the regulation respecting payment of half the fee of sixpence per acre with the whole of the survey fees in addition, should now be required to pay these fees.<sup>3</sup> The need of funds was admitted in a letter from Provincial Secretary Cameron to Colonel Thomas Talbot, in which he stated that the Receiver-General had received positive instructions to carry to the public account fees of every description, whether the settlement duties were performed or not.<sup>4</sup> It is quite true that such a course of action was adopted temporarily in 1817-18, and doubtless it gave rise to erroneous impressions as to the prevalence of similar measures. As will be shown later, this practice ended in 1818, and was not again renewed. In the meantime many minor schemes for creating revenue

<sup>1</sup>Q 324, I, page 13.

<sup>2</sup>Q 317, page 223.

<sup>3</sup>March 8. Minutes of Council, State F, page 295.

<sup>4</sup>March 20. Q 322, II, page 359.



from fees were tried. On the petition of John Small, Clerk of Council, a fee of 5s. 6d. cy. was placed on every application for lease of a reserve, whether successful or not, to act as a check on frivolous applications.<sup>1</sup> Again in April of 1818, the Council passed a regulation limiting the time for payment of fees to a period of three months.

The Home Government had been receiving complaints in this matter of fees, for early in 1818 Bathurst informed President Smith that the practice of requiring payment of fees immediately upon the locations being made out, and of not making out the deeds until some time after the settlement duties had been completed, was a serious inconvenience to settlers. In future, fees were not to be paid until the settlement duties had been completed, and then the patents were to issue promptly.<sup>2</sup> But the Council held decided views on this matter, and in a report made early in 1819 cited past experience in opposition to any such procedure. It was pointed out that under Hunter the time of payment was limited to three days from the date of the Order-in-Council; this practice led to much inconvenience and many complaints. So Gore had entirely rescinded it, and the old evil of non-attention to the suing out of the patent again cropped up. Hence the Council had set the time limit at three months. Upon its cancellation by the Home Government, no funds could be obtained to meet the expense of surveys demanded by new settlers, with the result that a system of paying surveyors by grants of land had been adopted, on conditions which enhanced the evil of extending locations without actual settlement.<sup>3</sup> To this argument Bathurst replied in due course, deprecating any suggestion of depriving the colony of funds; he had wished merely to relieve settlers of a burden. Instead of the course previously outlined, it would be better, under the circumstances, that proclamations should be issued by the Lieutenant Governor from time to time calling on all persons who had not taken out patents and paid the fees on grants of twelve months' standing to pay the fees or else forfeit the grants, a reasonable time being given them to come in and complete the business.<sup>4</sup> Then the Council again set the time limit at three months.<sup>5</sup>

Critics other than Gore were attacking the land system. So many enquiries had been received by the Home Government in connection with the assistance given to emigrant settlers that it was found necessary to insert a notice in the London papers to the effect that the Government would no longer give encouragement to persons who wished to proceed as settlers to His Majesty's dominions in North America, except to half-pay officers or persons in peculiar circumstances. The object in view was that of preventing a flow of indigent settlers into a country where they would have to contend with all the rigours of frontier life, with the possibility of their being thrown upon Government charity in case of failure, for from private charity there could come little relief in a land so sparsely settled. Many cases of extreme hardship already had been referred to the authorities. But the motive was misunderstood by men who, like Robert Gourlay, thought the Government should take a more active interest in the

<sup>1</sup>Minutes of Council, February 26, 1817. State F, page 294.

<sup>2</sup>Q 319A, page 131. February 26, 1818.

<sup>3</sup>Q 325, I, page 180.

<sup>4</sup>Q 319A, page 184. May 24, 1819.

<sup>5</sup>Minutes of Council, August 25. Land K, page 233.

peopling of the colonies. The existence of hardship among indigent settlers within easy reach of the Government stores for military and other assisted settlements was commented upon by others than the political agitators of the day.

One such person was an Irish gentleman by the name of Chearnley, who in the spring of 1818 received a grant of 200 acres, with 200 acres to each of three grown sons, "as settlers strongly recommended by the Under Secretary of State."<sup>1</sup> Shortly after his arrival in Upper Canada Chearnley wrote a letter to Bathurst describing his experiences. He had carried with him to Canada a personal letter from Bathurst to Governor Sherbrooke at Quebec. "I arrived there 4th November, and could get not the most distant approach to the Governor. I might as well attempt to see the Grand Lama Tippoo Saib—or Buonaparte—and so I told one of the aide-de-camps at the door of the Chateau. I proceeded to the usual and truly gentlemanly and happy rendezvous for all settlers and rapscallions, to Captain Fowler's gingerbread recruiting office, and *there* I met—the old soldier! truly and his four or five corporals at desks, and at duty with *pens* in their paws—instead of muskets on their shoulders—so I left them and the Captain together. As Captain Fowler could not find *Your Lordship's letter* for the soul of him—and Myers had just died, and the Commissariat store at Quebec was robbed but the day before—thinks I! This must be a precious way of colonizing and civilizing this country! and truly I find out the *secret* the farther I proceed up the country, and the more days pass over my head here; I have seen the *absurdity* of granting 900 acres to the *animal* with but *one* leg, two infant children, and lank, half-starved wife . . . the stores are the *grand source* from whence the struggling settler would expect his support. I will now say my sons have been in *more* than *one*, and have from the flour casks thrown out whole shovels of *young mice* . . . while poor human beings perished with hunger . . . not many miles distant from these *precious* *jobbing schools*. . . . I have witnessed the *tools* and implements, rusty and rotting in *heaps* in the Government stores, while the poor settler was *doled* out a miserable gimlet, or *very bad* ax, as a mighty great present from Government. . . ."<sup>2</sup>

Of course Chearnley, like most critics of his lively type, exaggerated the weak points while overlooking the things actually accomplished, but there can be little doubt that at times the administrative machinery, both at Quebec and at York, worked very badly indeed.

The order from Bathurst forbidding exaction of fees until patents issued has been referred to already. The resultant lack of funds for further surveys, with the introduction of a system of survey by contract, was now to affect seriously the quality of work done. At a Council meeting in December of 1818, it was ordered that newly purchased tracts and all unsurveyed lands be surveyed by contract, the Surveyor-General to give public notice that he would receive tenders. Payment was to be in land, and applicants must state the percentage wanted.<sup>3</sup> A concomitant to this decision was another of January 13, 1819, announcing that settlement

<sup>1</sup>Minutes of Council, Land J, page 314.

<sup>2</sup>March 28, 1818. Q 324. II, page 315.

<sup>3</sup>Minutes of Council, Land J, page 496. December 3.

duties no longer would be required and that land might be sold within three years after location.<sup>1</sup> The first tender for surveying which was accepted by Council specified a percentage of four-and-a-half.<sup>2</sup> The results of the system scarcely need to be told. The surveys already made in the province were by no means precise in accuracy, and those made under the new regulation were proportionately worse because of the greater incompetency of the contractors. Lord Durham's Report censured severely the confusion and errors which resulted. Lots were granted which had no existence on the map; lots which in the Surveyor-General's office appeared regular and of equal dimensions really were of varied form and unequal size. An attempt was made by Council to distribute as uniformly as possible the percentage lands selected by surveyors; they were ordered described in such a manner that the Crown should pay for only one patent in each township.<sup>3</sup> But the superior knowledge of the country possessed by the contractors often enabled them to choose the best lots in a given area, and "surveyors' script" was notoriously a good investment for speculators. Naturally, as the facts became known, popular criticism grew in volume.

There appear to have been other grounds for criticism. Maitland, upon his arrival in Upper Canada, seems to have found considerable slackness in the work of the Executive Council as a Land Board. "The Land Council appears to have been sleeping over an office clogged with applications," he wrote Bathurst.<sup>4</sup> Less than a month later he reported the bringing up of a very long arrear of business by the "daily exertion" of the Council.<sup>5</sup> Occasionally minor examples of carelessness cropped up. An example was the circumstance of town lots in Cornwall being granted free of all conditions—a state of affairs corrected by a special Order-in-Council in September of the same year.<sup>6</sup>

A curious petition for lands which came up for decision at about the same time as the foregoing, and which illustrates the extent to which the Government would go in accommodating Loyalists, is recorded in the Council Minutes as follows:<sup>7</sup>

"Abraham Hopper—a U.E. Loyalist. Praying for a grant of 200 acres of land for his daughter, Mary Hopper, who is an idiot."

The decision on it was brief:

"Granted in trust for the petitioner's daughter."

But another petition by a sham Loyalist met with different treatment:

"John Fike—Praying that his name may be inserted on the U.E. list."

Investigation was made, and the following decision resulted:<sup>8</sup>

"It appears from petitioner's discharge that he entered the army at the age of ten and served two years; his petition therefore cannot be granted as a U.E."

<sup>1</sup>Minutes of Council, Land J, page 521.

<sup>2</sup>Ibid, page 531.

<sup>3</sup>Minutes of Council, Land K, page 89. April 22, 1819.

<sup>4</sup>Q 324, I, page 129.

<sup>5</sup>Ibid, page 134.

<sup>6</sup>Minutes of Council, Land J, page 403.

<sup>7</sup>Ibid, page 413.

<sup>8</sup>Ibid, page 400.

Another successful settlement was begun about this time, in the Peterborough district. It was composed principally of English emigrants from Cumberland. With the Rideau settlements, it gave a decided increase to the purely British population.

A sketch of the manner of granting lands will serve to co-ordinate the numerous minor changes which had taken place in the years immediately preceding 1818. A petition of the ordinary non-privileged sort, upon receipt at the Council office, was duly entered in the books and then sent to the office of the Lieutenant Governor. If he approved it, it was referred to the Land Committee of the Council for investigation. Here the Surveyor-General was called upon for information as to previous location or other circumstance unfavourable to the petitioner. The Council's opinion was given and endorsed on the back of the petition by the Clerk of Council; the Lieutenant Governor then again passed judgment on its validity. If approved and ordered granted, the applicant was expected to apply at the Council office within three days of the order. He then received a transcript of the order, which he took to the office of the Receiver-General and there paid the required fees.\* The Receiver-General's receipt was taken to the Council office and there lodged, while the Clerk of Council issued an order on the Attorney-General containing a description of the quantity and other particulars of grant desired. The Attorney-General retained this order, and issued his fiat containing a duplicate of the description. The Surveyor-General received the fiat, copied it in his books and filed it, and the applicant then made his selection of land. This selection was duly reported to the Lieutenant Governor in a paper called the Location Paper. If approved, it was returned with the Lieutenant Governor's approbation and signature. Then the Surveyor-General prepared a detailed description of the grant, including the reserves; a copy was retained in his office, the contents entered in the various books, and the original document was sent to the Provincial Secretary, to whom it was the authority for engrossing the patent. That process completed, the patent was sent with the description to the Attorney-General, who checked it against the latter and also against the order he had received from the Council office. If correct, he signed it; then the Lieutenant Governor signed it; then it was returned to the Secretary to receive the Great Seal. Afterwards it was sent to the Auditor-General's office to be entered in his docket, and finally to the Register's office to be registered. The applicant might then receive it. Applications for leases of reserves went through much the same process, with the addition of the procedure involved in giving surety for compliance with the terms of the lease.<sup>1</sup>

Perhaps the most unsatisfactory feature of the whole system of free grants, once the associated companies had disappeared, was the evasion of settlement duties by the ordinary settler. Forfeiture for neglect had never been strictly enforced, because it seemed to entail a restriction of the very end sought, viz., the rapid settlement of the country. The recent waiving of all settlement conditions consequent upon the effort to obtain more and more fees probably had brought uncomfortable reports to the ears of those higher officials who really were responsible for the

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\*Ridout's report to Maitland, August 22, 1818. Upper Canada Sundries, 1818.



existing system. Theoretically the Home Government always had favoured the improvement of grants, and correspondence to that purpose had been received by the Provincial Government. For instance, early in 1816 Bathurst had informed Gore that there was no measure which legally could be adopted for resuming large grants of land remaining uncultivated which His Majesty's Government was not prepared to sanction, since that was the main obstacle to the improvement of Upper Canada.<sup>1</sup> So in October of 1818 action was taken, with a resultant Order in Council emphatically directing that settlement duties be performed on all grants of land in the province.<sup>2</sup> A satisfactory certificate was to be filed with the Surveyor-General by each applicant, to the effect that a habitable house had been erected and sufficient land cleared and fenced to aggregate a proportion of five acres in every hundred.

But there remained the problem of guarding against laxity in the enforcement of the requirements, and Maitland sought a new solution. John Beverley Robinson, who in 1812 had been appointed Attorney-General of Upper Canada, and in time (1829) was to become its Chief Justice, had proposed in the Assembly a measure to tax the lands of non-residents. The bill was defeated, however, chiefly because too many of the members themselves were landowners. It was a failure to meet half way the demands of such men as Gourlay, who advocated a land tax as the most direct remedy for the wild-land sickness from which the province suffered. Maitland now took up this idea. Bathurst informed him that the Home Government would readily sanction any measure the Legislature might be induced to adopt,<sup>3</sup> so the way was clear for action. Accordingly official pressure was brought to bear, and in due course a statute was passed imposing a tax of a penny in the pound on all wild lands held in fee.<sup>4</sup> The monies so received were ordered paid through the district treasurers to the overseers of highways in the divisions where the lands lay, who were authorized to expend it in road repair.

In this year also an attempt was made to remedy the defects of the assessment law and to introduce a general and equal system. The making up of accounts between the various districts soon had produced confusion and even litigation. Moreover, the existing law affected only owners resident in the province, while absenteeism was a growing evil. The matter of statute labour for road building had been regulated by compelling the owner of a lot to labour on the road a certain number of days, in proportion to the assessed value of his property, or else pay a sum of money in commutation of his labour. This labour and money were expended in the district of residence and hence not always where the land lay. Now, by the Assessment and Road Acts, the Surveyor-General was required to furnish the Treasurer of each district with a schedule of the lands in every township of the district, including descriptions of them, and to supplement it annually by returns of new lands granted. The Treasurer was directed to open an account against each lot described, charging it annually with the amount of assessment. A tax of one-eighth of a penny per acre was imposed on absentees in lieu

<sup>1</sup>Q 319A, page 26.

<sup>2</sup>Minutes of Council, Land J, page 467.

<sup>3</sup>May 11, 1819. Q 319A, page 177.

<sup>4</sup>Statutes of Upper Canada, 1791-1831, page 245.

## Form of Location Ticket.

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**LAND BOARD,**

*District.*

**A. B.** born at [*Place,*] in [*Country,*] of the age of \_\_\_\_\_ years, having arrived in this Province [*Date,*] and petitioned to become a Settler therein, has been examined by us, and we being satisfied with his character, and of the propriety of admitting him to become a Settler, and having administered to him the Oath of Allegiance, do assign to him One Hundred Acres of Land, being the \_\_\_\_\_ half of Lot No. \_\_\_\_\_ in the \_\_\_\_\_ Concession of [*Township*] in [*District,*] for which, upon due proof of having cleared and cropped Five Acres, and cleared half the Road in front of his Land, of having erected and inhabited a House thereon for One Year, he will be entitled to receive a Grant to him and his heirs, he paying the Patent Fee of £5 : 14 : 1 Sterling.

**N. B.** If the Settlement Duty is not performed within Two Years, this Location to be of no value, but assigned to another Settler.

of statute labour, to be expended in the district where the land lay. These measures, in conjunction with the tax on wild land, brought considerable revenue to the provincial treasury. If payment were left three years in arrears the rate was to be increased by one-third; if five years, by one-half; if left unpaid for eight years, the rate was to be doubled. The difficulty, of course, lay in lack of means to compel payment within a definite period. Many large proprietors refused to pay, hoping that the Act would be repealed at the end of its four-year term of duration.

Several changes in the land granting regulations were effected in 1819. In January the table of fees again was changed, and the following schedule adopted:<sup>1</sup>

For	100 acres.....	£5	14s	1d
"	200 " .....	16	17	6
"	300 " .....	24	11	7
"	400 " .....	32	5	8
"	500 " .....	39	19	9
"	600 " .....	47	13	10
"	700 " .....	55	7	11
"	800 " .....	63	2	0
"	900 " .....	70	16	1
"	1000 " .....	78	10	2
"	1100 " .....	86	4	3
"	1200 " .....	93	18	4

The division of fees may be illustrated as follows:

On	200 acres—Crown fee.....	£11	9s	4d
	Officers' fee....	2	18	8
	Survey fee ....	2	9	6
		16	17	6
On	500 acres—Crown fee.....	30	17	4
	Officers' fee....	2	18	8
	Survey fee ....	6	3	9
		39	19	9
On	1000 acres—Crown fee.....	60	11	8
	Officers' fee....	5	11	0
	Survey fee ....	12	7	6
		78	10	2

In March, the presence of land petitioners at York was dispensed with and District Boards were set up, having power to recommend for 100 acres.<sup>2</sup> No vacant land being found in Niagara district, it was deemed unnecessary to have a Board there. But to facilitate applications by residents for land elsewhere, it was ordered that the personal attendance of the applicant, if a native of the province, be dispensed with provided that the petition was accompanied by a proper certificate of worthiness. U. E. Loyalists and Military Claimants could not apply to these Boards, and had to go in person to the government offices. A Board might deal with persons arriving from the United States provided these bore certificates of British birth.<sup>3</sup> The new arrangement relieved the central executive government of a great deal of unimportant detail work in connection with ordinary grants.

<sup>1</sup>Minutes of Council, January 5, 1819. State G, page 29.

<sup>2</sup>Minutes of Council, March 13. Land K, page 44.

<sup>3</sup>Ibid, page 125.

In June it was decreed that no further petitions for land for missionaries would be entertained without proof that they had congregations and securities that they would remain on the land.<sup>1</sup> It was followed in July by a regulation classing as ordinary settlers all reduced officers or discharged soldiers who solicited locations outside the military settlements, the purpose being to prevent any exodus therefrom.<sup>2</sup> In October officers of the navy and the Indian Department who took up land in the military settlements were exempted from fees, paying only the officers' patent fee of £2 18s. 8d.<sup>3</sup> At the same meeting of Council it was determined to allow exchange of such lots as were discovered to be unfit for cultivation, through reference to the Surveyor-General alone, thus obviating the expense and delay of a reference to the Lieutenant Governor in Council.

A more important regulation was passed in December. "Convinced by experience that the regulations for granting the waste lands of the Crown, as established under other circumstances, were at variance with the present interests of the Province, and had actually opened a door to much imposition, it became my duty to seek a remedy,"—so Maitland explained the matter to Bathurst. A report by Ridout, Strachan and J. B. Robinson served as basis for the new practice.<sup>4</sup> In future, fifty acres of land would be given gratis to poor settlers. To make up the deficiency in revenue which would result, the fees on all grants of 100 acres or more were to be raised, in due proportion to the size of grant.<sup>5</sup> Poor settlers had objected to fees, which took away any little cash reserve they still possessed after their journey to Upper Canada. When the Government had ordered that payment of fees be not required until the patent issued, all revenue had stopped. When the time of payment was limited to three years, it was made a grievance. Wealthier settlers often deceived the Government in the matter of their means of cultivating a large grant; this circumstance led to charges that the size of grant was dependent merely upon caprice or something worse. The new regulations, it was thought, would guard against similar errors and stop complaints. The regulation forbidding sale within three years of location had been rescinded, sales being allowed upon proof of settlement duties performed. These duties were now redrawn and emphasized: the clearing of half the roadway along the whole length of every lot, and the erection of a dwelling house.

The new table of fees was to be as follows:

50 acre grants.....	free
100 " " .....	£12
200 " " .....	30
300 " " .....	60
400 " " .....	75
500 " " .....	125
600 " " .....	150
700 " " .....	175
800 " " .....	200
900 " " .....	225
1000 " " .....	250
1100 " " .....	275
1200 " " .....	300

<sup>1</sup>Minutes of Council, March 13, Land K, page 165.

<sup>2</sup>Q 325, II, page 270. Sanctioned Q 319A, page 199.

<sup>3</sup>Minutes of Council, Land K, page 286.

<sup>4</sup>Minutes of Council, December 3. State G, page 497.

<sup>5</sup>Ibid, page 75.



These were to be paid in three equal instalments, the first on receipt of location, the second on filing of certificate of settlement, and the third on receipt of fiat for patent. A written certificate of character, or else a satisfactory reason for not having one, was obligatory in all cases, else the petition could not be considered. Lands had begun to be valuable, and hence this high scale of fees was not without relation to local conditions. A minor change in rents of leases had been made in April, by which £1 15s. cy. rent per annum was reserved on all future leases for the first seven years, £3 10s. the second seven years, and £5 5s. the third.<sup>1</sup> A little later the fee on leases was increased by four shillings per lease, due to a requirement that they be drawn up on parchment instead of paper as formerly.<sup>2</sup>

The matter of communication was all-important in a pioneer age, and many schemes for improvements in that line were forthcoming. In November of 1818 a joint address from the Legislative Assembly and Legislative Council was sent to the Prince Regent, praying that part of the Crown lands be sold in order to furnish a revenue for the improvement of communication with the lower province.<sup>3</sup> In forwarding it to Bathurst, Maitland urged against use of the Crown lands if it could be avoided. In reply the Home Government expressed the utmost willingness to assist in so useful a project, but first desired to know how much money the Upper Canada Government would vote for it, and under what regulations the money would be applied. Whereupon the Assembly proceeded to discuss other more interesting matters. But some progress was made this year in communication within the province, notably by the opening of a road from Lake Simcoe to Penetanguishene. Special inducements to settle along the road were set forth by Order in Council. Lots of 200 acres were promised to all who would commence their settlement duties within one month of receiving the location certificate and would continue them until a house had been erected, ten acres cleared adjacent to the road, and the usual half of the road also cleared.<sup>4</sup>

In 1819 provision finally was made for grants to the militia and naval forces which had served in the late war. A township or part of a township in each district was set apart for the purpose.<sup>5</sup> Later, upon a suggestion that general permission to settle on any waste lands of the Crown would be more acceptable, these special tracts were relinquished and applicants were allowed to choose their lands in the usual way. As a special favour their patents were exempted from fees, but in no case might settlement duties be omitted or neglected.<sup>6</sup>

In a most unfortunate attempt to repress political activity when opposed to the Government, Maitland took the responsibility of refusing these grants to any persons known to have been present at a convention held in the previous year by Robert Gourlay and others of the radical leaders of the day. Unwise as the measure would be in ordinary circumstances, it was also clearly unjust in the case of persons, often of known loyalty,

<sup>1</sup>Minutes of Council, State G, page 55.

<sup>2</sup>July 1. Ibid, page 65.

<sup>3</sup>Q 324, I, page 170. Bathurst's reply is given in Q 319A, page 182.

<sup>4</sup>Minutes of Council, April 26, 1819. Land K, page 92.

<sup>5</sup>April 30. Ibid, page 94.

<sup>6</sup>Minutes of Council, May 31, 1820. Land K, page 423.

who had attended the convention merely out of curiosity. A great deal of popular indignation resulted, and inevitably the opposition to the Government was strengthened. The Home officials, as usual when the authority of the Crown was involved, approved the action of the Lieutenant Governor. In 1826 the Assembly presented an address to the King on behalf of those persons of known loyalty who thus were excluded from the benefit of a militia grant. They had not been tried by any legal tribunal, and hence the right of free speech was involved. In reply, Bathurst directed Maitland to permit grants "as soon as they shall severally assure you of their deep contrition for having belonged to an assembly which . . . was highly derogatory and repugnant to the spirit of the Constitution of the province and tended greatly to disturb the public tranquillity."<sup>1</sup>

Maitland favoured very little the whole plan of militia grants. In recommending that they be made he told Bathurst that he did so because Brock had held them out as an inducement to vigorous service. He limited them exclusively to those to whom they were pledged, "and even with this limitation it has necessarily been the cause of throwing a large portion of the waste lands of the Crown into the hands of persons many of whom already were large landholders—at all events not less than 500,000 acres have thus been unavoidably alienated from the Crown without the advantage of any addition to the population."<sup>2</sup> An example of the strict limitation of these grants appears in the fact that only living survivors of the war received them; petitions from relatives of those who died in action uniformly met with refusal.<sup>3</sup> Wise as Maitland's view of the matter undoubtedly was, no little discontent was created by its application, for to the man on the farm it seemed strange that the Government should give grudgingly to those who had served under arms in time of need, when everywhere could be seen examples of a past over-lavish bestowal of similar gifts upon those who little deserved them.

In December of 1819 two matters of some importance were discussed in Council. One was a scheme for avoiding the expense of free patents to the grantees of the military settlements. The Lieutenant Governor submitted to a committee of three persons, Strachan, J. B. Robinson and Surveyor-General Ridout, the form of a land patent as used in the province of New Brunswick, by which several grants to individual settlers were put into one patent, giving descriptions of each lot and referring to an accompanying plan made and authenticated by the Surveyor-General. The committee was asked to report whether it would be practicable to use a similar form in Upper Canada, especially in respect to the proposed grants in the military and naval settlements.<sup>4</sup> In transmitting the proposal to the Home Government Maitland explained that the provincial government had not the means wherewith to cover the expense of free patents.<sup>5</sup> The committee's report, while pointing out a number of difficulties, favoured the scheme, and Bathurst approved it. But when later an attempt was made to give it practical effect, it was found that a great deal of difficulty would occur in the preparation of these general patents

<sup>1</sup>Q 371A, page 113.

<sup>2</sup>Q 331, page 51. March 18, 1822.

<sup>3</sup>An example, Minutes of Council, Land L, page 72, case of Blackman.

<sup>4</sup>Minutes of Council, Land K, page 317.

<sup>5</sup>Q 325, II, page 486.

in the case of townships where some single patents for separate grants already had issued, or in which all the grantees were not yet entitled to deeds. It was also thought that the giving of single patents to other settlers later on might cause jealousy. In the meantime over one thousand persons were clamoring for patents (November, 1824), so single patents were issued as formerly, recourse being had to the military chest at Quebec for the necessary funds, though much against Bathurst's liking.<sup>1</sup> So ended the only serious attempt to issue a general patent in Upper Canada.

The other matter was a proposal to do away with the vexatious question of fees by substituting for them fixed salaries. At Maitland's request the land officers met to discuss this very desirable change, and in due course they announced that it had their unanimous approval. They pointed out that even should a considerable sacrifice of their present interest be involved, it would place their offices "on a more respectable and less precarious footing."<sup>2</sup> This opinion was forwarded to the Home Government, but as usual where a direct charge on the Crown funds was involved a long delay ensued, and not until 1826 was permission to effect the change granted.

Some minor regulations initiated in 1820 are worthy of notice as throwing light on certain developments in connection with settlement. One of these had to do with mill sites, in which connection speculators appear to have been busy. The new regulation prohibited Land Boards from locating any mill sites until security had been given for the erection of mills.<sup>3</sup> This plan already had been tried out in certain new townships with marked success. Another measure further restricted military grants. An applicant by name of Robert Stanton asked for a grant as lieutenant in the York Militia during the late war, stating that already he had received 300 acres as a reduced clerk in the Commissariat. The Council's decision was explicit: "No person can be allowed to receive lands for past services but in one capacity."<sup>4</sup> A third change came in the form of Instructions to Maitland from the Home Secretary on the granting of town lots. There being no reason why the Government should encourage settlement in towns or their immediate vicinity by conferring lots gratuitously, in future such lots were to be disposed of solely by lease or sale, unless they were intended for some public purpose.<sup>5</sup>

A sequel to the Perth settlement came this year in the form of the so-called Lanark settlement. In May, the British Government made arrangements for the transportation to Upper Canada of "a portion of the labouring population" of Lanark County, in Scotland. Some twelve hundred of these were induced to emigrate through favourable reports from relatives and friends already settled on the Rideau and Tay Rivers, and as they expected to receive some assistance from the latter, it was decided to place them in the same neighbourhood.<sup>6</sup> The Government not only provided means of transport but rendered financial assistance in the

<sup>1</sup>Q 336, II, page 512.

<sup>2</sup>Minutes of Council, State G, page 502. December 11, 1819.

<sup>3</sup>January 12. Minutes of Council, Land K, page 349.

<sup>4</sup>April 5. Ibid, page 380.

<sup>5</sup>Q 336, II, page 512.

<sup>6</sup>Bathurst to Maitland, May 6, 1820. Q 319A, page 229.

form of loans payable in ten years. The lot of these settlers was not so fortunate as that of their friends in the Perth settlement. The land assigned, later named Lanark County, was of such poor quality as to preclude success almost from the beginning. In 1831 the settlers petitioned Lieutenant Governor Colborne for a remission of the money advanced to them on their arrival in the province, giving as a reason this inferiority of soil.<sup>1</sup> Colborne investigated and found that their complaints were well-founded; the surveyor who reported on the case stated that the second generation of these settlers almost invariably was forced to remove to other parts of the province.<sup>2</sup> The petition and report were submitted to the Home Government. At first the Treasury Lords suggested that the monies be reimbursed out of any surplus available from the Land fund. But the Home Secretary objected, pointing out that Upper Canada was not responsible, as the emigration had been initiated by His Majesty's Government with no resultant benefit to the province. Eventually the Treasury Lords consented to allow the government claim of some £22,600 cy. to lapse.<sup>3</sup>

The status of settlement duties was undergoing change. Instructions from the Home Government about this time contain many references to the necessity of strict supervision in this matter, so important for the general welfare of the province. In March of 1820 the Lieutenant Governor directed that no location requiring settlement duty be confirmed by patent without a certificate from the local Land Board to the effect that settlement duty had been performed within the specified time.<sup>4</sup> A little later in the same month it was decided to issue a circular to the Land Boards modifying the duties, by including in the five acres of clearing the one-half of the road, with the cutting down, without clearing, of the front of the lot to a depth of one chain from the road. This change was the result of complaints as to the difficulty of fulfilling the duties within the specified time.<sup>5</sup> In February of 1821 a further modification was introduced. It was claimed that many persons who received land grants had been unable, because of sickness or other legitimate cause, to comply with the settlement duty conditions. So the time of completion was now extended to two years from the date of location.<sup>6</sup> One-third of the patent fee was required to be paid upon lodgment of a certificate of duty performed, and this condition in turn became a source of complaint. Accordingly, in October it was announced that in future the grant would not be confiscated upon non-payment of this amount, provided the patent was taken out within one year afterwards.<sup>7</sup>

At the same time action was taken against military delinquents in the performance of settlement duties; public notice was given that all lands granted to military applicants upon which settlement duties were in arrear would be cancelled within six months from the date of the announcement, unless proper certificates of duty completed were presented within that time. Interesting information as to the means employed by some grantees, other than military, to circumvent the duty regulations is given in letters

<sup>1</sup>Q 356, page 180.

<sup>2</sup>Report by Rankin. Q 385, I, page 3.

<sup>3</sup>January, 1836. Q 394, I, page 65.

<sup>4</sup>Minutes of Council, Land K, page 363.

<sup>5</sup>*Ibid.*, page 372.

<sup>6</sup>Minutes of Council, Land L, page 15.

<sup>7</sup>*Ibid.*, page 141.



of the time. "Not a tree has been cut down above a foot in diameter," wrote one indignant settler to the Lieutenant Governor, "all the rest have been left standing, and with the exception of such logs as by the falling of the trees were placed out of the road, not a log has been removed, nor has there been, to all appearance, a single tree slashed." This statement referred to road clearance; the matter of cultivation and buildings also came in for criticism. "The settlement duty houses are composed of small poles about four inches in diameter, laid one upon another, not the hack of an axe to be seen about them except where they have been cut down . . . miserable pens covered with a few hemlock boughs which the winter snow has broken down." The particular lots to which this description applied were named, and the Executive Council, to whom the letter had been transmitted by Maitland, ordered the Attorney-General to take legal steps against the owners.

The year 1821 brought only minor changes in the administration of the Crown lands. Slow but steady progress in settlement had been made; in his opening speech to parliament in February, the Lieutenant Governor pointed out that within the past two years some forty townships had been surveyed and in a great measure bestowed upon condition of actual settlement.<sup>2</sup> In March a petition from the inhabitants of part of Durham County was presented to Maitland, claiming the right of all those holding lands by certificate of location to vote in the provincial elections. As matters then stood, only those holding patents could do so, although the lands of all grantees were subject to assessment as soon as occupied. Maitland forwarded the petition to Britain in the usual way, remarking that the question was one of wide interest in the province, as sometimes patents were a long time in issuing even after the settlement duties had been completed, but that the old inhabitants were extremely jealous of the extension of the suffrage.<sup>3</sup> The matter had been agitated in the Provincial Assembly, but without result, because of their opposition. Appeal was made eventually to the Home Government, whose law officers decided that the right of voting could apply to lands held on certificates granted before the division of the province, or on regular patents, or on certificates of location after the settlement duties had been performed.<sup>4</sup>

A new method of dealing with long-settled intruders on Crown lands was introduced in May. Where a person of this description had improved the land without authority, and where there was no other claim, it was to be declared a special reserve for the Crown and then leased in the usual way to him alone.<sup>5</sup> A general rule respecting navigable waters was formulated at the same meeting of Council; the beach was to be reserved for public use and one chain along it reserved for a road. In November a further restriction was placed on naval grants, only officers not serving in any capacity in the province to be eligible. This ruling was extended to military officers as well.<sup>6</sup> About the same time sixteen townships, extending from the Ottawa River to Lake Simcoe, in the rear of the existing settle-

<sup>1</sup>Matthew Crooks to the Lieutenant Governor, May 10, 1822. Minutes of Council, Land L, page 229.

<sup>2</sup>Dominion Archives, Series M, 173. Emigration, Miscellaneous.

<sup>3</sup>Q 329, page 281. Petition is given on page 289.

<sup>4</sup>September 9, 1826. Q 342, page 55.

<sup>5</sup>May 2, 1821. Minutes of Council, Land L, page 65.

<sup>6</sup>Q 337A, page 47.

ments, were thrown open. Special terms were offered to settlers who would take up land in them, in the form of grants under the reduced scale of fees of January, 1819.<sup>1</sup> As a result of the increase in settlement, a new division into counties became necessary this year.<sup>2</sup>

An interesting relic of the early history of the province disappeared in the summer of 1821 with the regranting in free and common soccage of the feudal tenure of Grande Isle, near Kingston. The island and adjacent territory on the mainland had been granted to La Salle, in 1615, by the French King. In 1788 Messieurs Michel and Amable Curotte presented a claim to the island as the legal representatives of the original owner, and in the absence of any opposing claim it was allowed. Later a conveyance was made to David Alexander Grant and Patrick Langan; both these gentlemen died intestate. The three daughters of Langan and Colonel Grant's widow thereupon laid claim, and in due course received the grant in freehold tenure to which reference has been made, thus bringing to an end the first seigneurie in what is now the Province of Ontario.<sup>3</sup>

The year 1822 marked the end of the first period of twenty-one years under which the Crown reserves had been leased. The Government accordingly increased the rents uniformly throughout the province, as anticipated in the original plan. Perhaps twelve hundred 200-acre lots had been leased during this first period, aggregating a revenue of about £4,000 per annum. Unfortunately this rental was paid so irregularly as to make the amount of actual receipts much smaller. It was estimated that a total of about ten thousand lots were available for leasing, but comparatively few were taken up because of the ease of acquiring freeholds. Being unoccupied, the others were a distinct hindrance to progress in settlement, and a plan to overcome the difficulty was proposed by John Beverley Robinson, and approved by Maitland. Its main feature was the granting to leaseholders permission to purchase their lots at any time they wished. A minimum price was set, varying with the changing value of other land, the rent paid to be considered as part of the purchase money, but only on condition of its being paid regularly and promptly. A report by the Surveyor General in this connection showed that the actual number of Crown reserves in the province was 7,144, of which only 706 were under lease. The Home and Newcastle districts boasted a high percentage of leased reserves, while in the London district there was a very large proportion of unleased. In reviewing the whole situation, Robinson admitted that under existing conditions the rents in arrear did not cover the cost of their collection.<sup>4</sup>

A small migration of settlers from Stirling, in Scotland, to Upper Canada occurred this year, resulting in a settlement of the same name not far from the present town of Belleville. It is to be noted that although these settlers, after obtaining permission to emigrate, were promised land grants proportioned to their means of bringing them into cultivation, yet they were expressly warned by Bathurst not to expect any other encouragement. Moreover, they came out at their own expense.<sup>5</sup> The lessons learned

<sup>1</sup>Minutes of Council, November 7, 1821. State G, page 192.

<sup>2</sup>Statutes of Upper Canada, 1791-1831, page 269.

<sup>3</sup>Q 337A, page 24, and Q 328 II, page 240.

<sup>4</sup>Memorandum by John Beverley Robinson. Q 332, II, page 469. Also Upper Canada Sundries, 1823.

<sup>5</sup>Q 337A, page 52.

from past settlement schemes evidently were playing some part in formulating colonial policy. About this time many petitions were coming to the Home Secretary from the wives of settlers already in Upper Canada, asking help in joining their husbands in the new land.<sup>1</sup> Often these women were wholly dependent on state aid in this connection.

In July of 1823 about 195,000 acres of Crown land were specially advertised for sale, for the purpose of creating an endowment fund for provincial schools. The history of these school lands dates back to 1798. In that year, as has been noted, twelve townships were appropriated for educational purposes.<sup>2</sup> Of the 740,000 acres comprised in this tract there remained a total of 549,217 after deducting the Crown and clergy reserves. These lands not proving immediately available as a source of revenue, the Assembly passed a temporary Act in 1807 providing out of the provincial funds for the establishment of a grammar school in each district, with £100 salary yearly to each master. These schools, called District Schools, in nowise interfered with the object of the general endowment, being irrespective of it, and meant to provide merely for the pressing needs of the province. They were placed under trustees nominated by the Lieutenant Governor; by 1839 twelve of them were in operation. In 1816 the Assembly presented an address to Lieutenant Governor Gore, desiring that lands be reserved to found public schools, and asking for information as to the founding of a provincial seminary. At the same time £6,000 was voted toward the elementary schools. Gore favoured the plan in general, and announced his willingness to follow up the Assembly's action by an appropriation of 200 acres of Crown reserves for the use of each school when established, subject to approval by the Home Government. Secretary Bathurst approved the scheme so far as public schools were concerned, but informed Gore that the Prince Regent was about to found a seminary at Montreal, and it would be better to make it an inter-provincial institution.<sup>3</sup> Lieutenant Governor Maitland took up the matter in 1819 and protested vigorously, pointing out that the seminary might almost as well be situated in England as in Montreal, so difficult and expensive was travel between the provinces. Finally, in this year, permission to sell lands for a provincial university, as well as for the common schools, was obtained. Then, in 1823 Maitland proposed to Bathurst the formation of a General Board of Education.<sup>4</sup> In due course action was authorized, the Board came into being, and the Executive Council set apart for its use eight townships, containing the 195,000 acres already mentioned.

Up to this time the original endowment of school lands had remained untouched, but now at varying intervals, to facilitate settlement or for similar reasons, small portions of it were alienated and a corresponding number of acres reserved in new townships in their stead. In this way, by 1832, some 170,719 acres had been granted, while in lieu thereof a total of 272,600 acres had been appropriated elsewhere.<sup>5</sup> Some 19,282 acres also were alienated as percentage to surveyors. In 1825 Maitland

<sup>1</sup>One such applicant styled herself "Eleanor Gibbons, Wife to John Gibbons of Perth, Upper Kannad, America." Q 337A, page 205.

<sup>2</sup>For a list of the original townships see Q 417, I, page 258.

<sup>3</sup>Q 319A, page 46.

<sup>4</sup>Q 417, I, page 258.

<sup>5</sup>Appendix to 1831-32, Journals of the Assembly.



suggested that those school lands lying in large tracts remote from settlement be exchanged for an equal quantity of the Crown reserves then under lease, as the latter could easily be sold and thus provide at once for the establishment of a university. With Bathurst's approval this suggestion was carried out in 1827; King's College<sup>1</sup> at York, was endowed with 225,944 acres of the reserves, and against the proceeds, as they became available, was charged the salary (£250 per annum) of its first principal. At the same time the British Government granted, out of the revenue derived from the Crown lands, £1,000 yearly toward erecting the necessary buildings, to continue for a period of sixteen years from the beginning of 1828.<sup>2</sup> In 1830 the establishment of Upper Canada College was sanctioned by the Home Government; it received an endowment of 66,000 acres of the school lands,<sup>3</sup> with £500 from the provincial treasury.

In 1831 a Select Committee of the Assembly drew up a report on the whole matter of educational endowment, suggesting that the revenue from the school lands be used to establish firmly the intended system of grammar schools before any appreciable amount was used for the university, and asking that the school lands revenue be placed at the disposal of the Legislature rather than the Board of Education. An address embodying the substance of this report was sent to the British Government, and in 1832 assent was given. In explaining to Lieutenant Governor Colborne the reason for this ready acquiescence, Secretary Goderich pointed out that the tone of the Assembly was moderate and opposition to its wish might increase the numbers of the radical party under William Lyon Mackenzie.<sup>4</sup> A report to the Assembly by the Surveyor-General estimated the area of the remaining school lands, now under parliamentary control, at 258,330 acres.

Only minor regulations occupied the attention of the Executive Council during the remainder of the year 1823. In December the Lieutenant Governor directed attention to the inexpediency of continuing the existing system of granting glebes on license of occupation, and the advisability of formulating some general rule of leasing them. The glebes had been set apart long before the reserves for the clergy, and the usual term of occupation had been one year. The Council recommended that in future the same terms govern their disposal as applied to the clergy reserves, namely, that they be rented, that one lot in each township be reserved for the accommodation of the incumbent clergyman, and that the revenue derived from the rental be used in endowing each living.<sup>5</sup>

Occasionally applications for grants of islands in provincial waters were petitioner it was referred to Secretary Bathurst. His reply illustrates the policy adopted: "It is not in my power to depart from the general rule of reserving all islands for the use of the Crown."<sup>6</sup> Primarily, of course, the motive was military; usually the islands lay between Upper Canada and the Northern States, and fear of some future renewal of Navy Island, in the Niagara River. Because of the high station of the received by the Council. An example is Sir John Johnson's request for

<sup>1</sup>Now University College of the University of Toronto. The first principal was Bishop Strachan. Q 371A, page 171.

<sup>2</sup>Minutes of Council, April 7, 1831. State I, page 491.

<sup>3</sup>Minutes of Council, Land L, page 493.

<sup>4</sup>Q 337A, page 139. December, 1823.

<sup>5</sup>Q 376A, pages 93 and 96.

<sup>6</sup>Q 354, page 286.



hostilities existed. A more interesting application, received in the same year, was that of David Thompson, Astronomer to the Boundary Commission under the Treaty of Ghent.<sup>1</sup> Thompson stated that in 1817 he had purchased from the St. Regis Indians an island called Big Island, in the Saint Lawrence River, at the south-eastern extremity of Upper Canada, containing about one hundred acres. The Indians having no legal right to sell it, he had retained only nominal possession. Now he asked for a grant, wishing to use the island as a dairy farm. In support of his claim he cited "the almost incredible hardships and dangers" he had undergone in his geographical survey of the country from Lake Huron to Hudson's Bay to the Pacific, and his privations while serving on the Boundary Commission since 1817. Although a settler in Upper Canada, with a large family, he had neither asked nor received any grant of land. The Council, of course, could not comply, and explained to him the special instructions restricting the granting of islands.<sup>2</sup> Thompson's claims on the generosity of the Government were well founded. Few men have had a larger part in the exploration of this continent, and the extraordinary accuracy of his work is all the more remarkable, in view of the immense territory he covered.<sup>3</sup> He died in London, in such abject poverty that he was forced to sell his instruments and pawn his coat to buy food for himself and his family. Might not the tale have had a happier ending had he obtained the coveted island-farm?

In 1824 the matter of provincial assessment again received attention. The duration of the Act of 1819 imposing a tax on wild lands had been limited to eight years. A new Act was now passed by the Assembly, making permanent this temporary Act and further stipulating that assessments in arrears for eight years be paid by the sale of part of the lands.<sup>4</sup> Notice of sale and the power of redemption within twelve months by payment of the back taxes protected owners from unnecessary hardship. Returns of all unsurveyed land were required of each property owner by the first of July, under penalty of fine for neglect. The bill was opposed in Assembly by only four members; they happened to be the largest land-owners in the House. But Maitland learned that when it came up to the Legislative Council, in which there were a number of large land-owners, there would be considerable opposition. So he called a special meeting of the Executive Council, on which sat several members of the Legislative Council, and read them a paper on the evils of waste lands, pointing out that he himself desired the passage of the Act, and that the Home Government especially desired it. He reminded them that because the Act of 1819 had only four years more to run many persons had delayed payment of the tax, hoping it would be discontinued at the end of that period, and this fact had constituted a chief reason for its partial failure. The new bill would end that difficulty, and he would greatly regret any opposition to it. This paper was duly entered in the Minutes of Council.<sup>5</sup> The new bill passed the Legislative Council by a small majority.

<sup>1</sup>Q 333, II, page 224.

<sup>2</sup>Ibid, page 221.

<sup>3</sup>"David Thompson's Narrative of his Explorations in Western America, 1784-1812," by J. B. Tyrrell. Vol. XII. of the Champlain Society's publications.

<sup>4</sup>Statutes of Upper Canada, 1791-1831, page 397.

<sup>5</sup>Minutes of Council, January 12, 1824. Land F, page 348.

Because Chief Justice Powell urged legal objections to it, and because other persons financially interested were working against it, Maitland reserved the bill for His Majesty's pleasure thereon. The farmers in general favoured it, and also the more public-spirited land owners. After being referred to the Lords of Trade it was formally sanctioned and became law early in 1825. William Lyon Mackenzie and other members of the radical party criticised severely certain details, chiefly the fact that the monies arising from its action were to be handled by local Justices of the Peace, "whom the government could make or unmake at pleasure."<sup>1</sup> But the real value to the province of legislation along this line was unquestionable. It imposed a check on speculation and absentee ownership, without embarrassing, to any appreciable extent, small owners who had been unable to effect much improvement in their holdings.

The expense of free patents still was a burden to the Government, and the policy of giving free grants of fifty acres each to poor settlers accentuated it. Maitland was of the opinion that this liberality had been abused;<sup>2</sup> moreover, the class of settlers now arriving in Upper Canada stood less in need of assistance of this sort. Hence, early in 1824, the 50-acre free grants were abolished, and the fees on other grants considerably reduced, as follows:

		£	s.	d.
On	100 acres	5	14	1
"	200 "	16	7	6
"	300 "	24	11	7
"	400 "	32	5	8
"	500 "	39	19	9
"	600 "	47	13	10
"	700 "	55	7	11
"	800 "	63	2	0
"	900 "	70	16	1
"	1000 "	78	10	2
"	1100 "	86	4	3
"	1200 "	93	18	4

In cases where an applicant had a family of at least five children the fees on 200 acres remained as under the 1804 regulations (£8 4s. 1d.).

On 100-acre and 200-acre grants in townships surveyed before 1819 the fees were set at £12 and £30 respectively. Those who had received free 50-acre grants might obtain fifty acres in addition by giving up their deeds and paying the fees as prescribed for 100-acre grants. This new arrangement duly was sanctioned by the Home Government and took effect in August.<sup>3</sup> But the old complaint still lingered; in April of 1825, replying to an address by the Assembly asking information on land matters, Maitland asserted that "the whole amount of receipts arising from the grant or lease of the Crown Lands had never yet sufficed to pay the necessary expenses of gratuitous grants to the descendants of Loyalists and others," and to meet the annual charge of £1,000 toward the Lieutenant Governor's salary.<sup>4</sup>

In 1824 considerable activity in waterway projects was evinced. The Rideau and Burlington canals were discussed between the Provincial and Home Governments, but the most important proposal was that of the

<sup>1</sup>Mackenzie's "Sketches," page 245.

<sup>2</sup>Q 335, II, page 387.

<sup>3</sup>Bathurst to Maitland, August 13. G 60, page 266.

<sup>4</sup>Q 338, I, page 201-2.

Welland canal, for the construction of which a company already had been formed. The president and directors presented to Maitland, for transmission to London in the usual way, a petition for an extensive grant of land to assist in the work of construction. In forwarding it to Bathurst, Maitland observed that half the stock had been subscribed in the United States, because of lack of enthusiasm in Canada, and doubted the advisability of subjecting a considerable landed property in Upper Canada to the control of a company so constituted. He was also of the opinion that with the aid of these foreign subscriptions the undertaking would be attempted in any case.<sup>1</sup> Another objection was that the canal was to be brought into the Niagara River, directly under the guns of the United States fort there, instead of opening into Lake Ontario. On the latter ground Bathurst refused to make the grant.<sup>2</sup> A further memorial was sent by the company, in which it was stated that a grant of some Crown lands would create public confidence, as showing that the Government had an interest in the work, and would attract capital as well. The land desired was the Great or Cranberry Marsh; it lay in Wainfleet Township, covered some 13,000 acres, and would become valuable only upon the completion of the canal, which would drain it. Much of the work already had been done.<sup>3</sup> It was also proposed to have the canal open directly into Lake Ontario. In view of this change Bathurst authorized Maitland to grant what land was required, provided a distinct reservation was made of such lands as might be required by the Government for public purposes.<sup>4</sup>

Popular criticism of the lands administration by no means was decreasing in volume, and Maitland was beginning to find the post of chief executive a most uneasy one. The Assembly contained a majority of the reform party, and was beginning to advocate more vigorously its claim to a larger share in the administration of public affairs. In the address presented to the Lieutenant Governor in April of 1825, a request was made for an account of all fees paid upon land grants during the previous four years, with a statement of their appropriation, and also a statement of the annual amount of receipts from the Crown reserves leases, with the amount then in arrear. Ignorance of the details of the administration's actions inevitably bred distrust in the popular mind, and in the complicated business of the Lands Department opportunities for fault-finding were multiplied. "The grant of the waste lands of the Crown," wailed Maitland, "in the dispensation of an angel would be fruitful of imaginary grievance."<sup>5</sup> Fortunately a change was at hand.



Facsimile of the signature of Earl Bathurst.

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<sup>1</sup>Q 336, II, page 506.

<sup>2</sup>Q 371A, page 5.

<sup>3</sup>Minutes of Council, October 6, 1826. Land M, page 678.

<sup>4</sup>Q 371A, page 62.

<sup>5</sup>To Bathurst, December 15, 1820. Q 328, II, page 185.

## CHAPTER VI.

### THE NEW SOUTH WALES SYSTEM.

Proposals for the disposition of the Crown lands by sale had been discussed at an early date in the history of Upper Canada. Prescott's plan of an additional fee (1798) in his opinion was secondary to one of sale; the former was added only "in case the disposal by sale should not be consistent with the dignity of His Majesty's Government."<sup>1</sup> Already means of evading the true spirit of the Royal Instructions concerning free grants had been found, to such an extent that Prescott believed persons desirous of acquiring land for actual settlement would succeed much better under a system of public sale. At that time he proposed that the land be sold in allotments of from 5,000 to 12,000 acres, whereby a company of from four to ten respectable and industrious farmers might be able to make the purchase without inconvenience. He thought the union of four or five farmers necessary to ensure the vigorous commencement of a new settlement. The surveys for the settlement were to be made at the expense of the purchasers. All sales were to be made subject to conditions of cultivation in the proportion of five acres out of each hundred of fit land, to be actually cleared and cultivated within seven years from the date of patent. In case of neglect to comply with this condition, a percentage of the land was to revert to the Crown at the end of the seven years, the percentage to vary with the degree of neglect. He was of the opinion that such a course would have much better effect than one entailing total forfeiture of the land, as it would obviate the chance of injustice to the settler and would not tend to defeat the Governmental purpose of developing settlement.

Sales were to be held only in January and February, when the farmer could best spare time from his ordinary business. Public notice of the sales was to be given from six to nine months beforehand as a means of ensuring sufficient publicity. Since most farmers, even of the wealthier sort, would require time to dispose of their property in the United States or elsewhere preparatory to coming into the province, Prescott proposed that only a small part of the purchase money be required at the time of sale, the remainder to be paid upon delivery of the patent; of course, within a limited period from the time of purchase. Should it not be paid within that period, the sale was to be revoked and the purchaser's deposit forfeited. Out of the purchase money the land officers would receive the same fees as were allowed on free grants. To prevent depression of land values, only a limited amount was to be sold in any one year, and in all cases a minimum price was to be fixed, below which no offer might be accepted. Commissioners to superintend the sales were to be appointed; they could be paid by a percentage on the amount sold. To prevent collusion between these commissioners and speculators, they were

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<sup>1</sup>Prescott to Russell, April 21, 1798. Q 284, page 224. The plan of sale is given on page 233.



to take an oath of office, and under no circumstances were they to be allowed to postpone the hour of a sale or otherwise change the arrangements as advertised. Special exceptions to this plan of sales would be necessary in the case of United Empire Loyalists and other privileged persons.

This proposal, the most substantial of its sort prior to 1825, had been taken into consideration by the Executive Council and recommended, with some changes, to the Home Government for adoption in the province.<sup>1</sup> The changes were of a minor sort; it was suggested that after deducting the Crown and clergy reserves and a sufficient quantity for the constantly recurring claims of privileged persons, the whole of the remainder might be disposed of by sale. It was also considered preferable to sell in 1,000-acre tracts rather than 1,200, the quantity inferred in Prescott's plan, because of the ease with which the reserve sevenths could be set apart in 200-acre lots without fractional parts. Prescott himself considered 1,000 acres the better unit, but named 1,200 acres because already numerous grants of that size had been made.<sup>2</sup> The Home Government, however, preferred the plan of an additional fee, probably because it seemed to promise a more immediate revenue by which the expenses of the Provincial Government might be defrayed without recourse to the military chest, and the sales proposal was shelved.

In 1823 Lieutenant Governor Maitland, in a letter to the Home authorities, expressed himself as being strongly in favour of selling the Crown lands in their entirety.<sup>3</sup> The idea had come to him through J. B. Robinson's plan of permitting the purchase of Crown reserves by tenants already leasing them. It now appeared that the Home Government had been working for some time on a plan of this nature, to be applied not only to Upper Canada, but to other provinces of Canada and to other colonies as well. This plan already had been given practical application in New South Wales and Van Dieman's Land, and its success there was considered a sufficient reason for extending it to other parts of the Empire. By 1825 all the details of this wider scheme had been reduced to form and printed. Attorney-General Robinson happened to be in England at the time, and to him a copy was submitted, with a request for his opinion as to its applicability to Upper Canada.<sup>4</sup>

Robinson reported that "such a system would be found in the end very beneficial to that province."<sup>5</sup> He pointed out that those to whom the faith of the Government was pledged for free grants must be left undisturbed, but the New South Wales regulations could extend to all others. He thought certain minor alterations would be necessary, and outlined such a modification of the plan as he considered best suited to the needs of the province. Its principal feature was a division into parishes of about fifty square miles each, or practically twice the size of parishes in New South Wales. In this way each township could be divided roughly into two parishes. Following this, a valuation of all lands should be made, and an average price struck for each parish. At this price all lands not

<sup>1</sup>Minutes of Council, July 13, 1798. State B, page 179.

<sup>2</sup>Prescott to Russell, April 21, 1798. Q 284, page 224.

<sup>3</sup>To Horton, September 30, 1823. Q 333, II, page 241.

<sup>4</sup>Q 341, page 67.

<sup>5</sup>Q 339, II, page 379.

alienated from the Crown might be offered for sale. Purchasers would have to apply to the Lieutenant Governor in writing, on a prescribed form, for the land they wanted to buy. The purchase money might be paid in quarterly or annual instalments, as preferred, but ten per cent. discount should be offered for cash payment. On receipt of full payment a grant in fee simple would issue to the purchaser at the expense of the Government. The largest amount one person might buy should be 10,000 acres; those wishing to make more extensive purchases could apply in writing to the Secretary of State, explaining fully their object and means.

In the scheme provision was made for the obtaining of lands without purchase. Application for land on these terms should be made to the Lieutenant Governor on a prescribed form. The largest amount to be obtained without purchase should be 1,200 acres. No one should be allowed land without purchase unless he could satisfy the Government of his ability and intention to spend in its cultivation a sum equal to half its estimated value, or else, in the case of grants not above 200 acres, of his intention to reside upon and improve the same. The terms for grants without purchase were to comprise a quit-rent of five pounds per cent. per annum on the estimated value, to be redeemable within the first twenty-five years following the grant, on payment of a sum equalling twenty times the annual amount of quit-rent. Until the end of the first seven years of occupation no quit-rent was to become due, but at the end of that time the grantee should be required to prove to the satisfaction of the Surveyor-General that he had expended a sum equal to half the original estimated value; in the case of small grants not exceeding 200 acres it would be sufficient to prove residence and cultivation. Failure to supply such proof would entail forfeiture of the grant. If the same person should then desire another grant without purchase he was to be compelled to pay a quit-rent on it from the beginning.

This report was regarded favourably by Bathurst, who at once sent to Maitland a copy of the New South Wales scheme, including Robinson's observations on it. He requested that it be installed in Upper Canada as soon as possible, unless it were considered decidedly inexpedient.<sup>1</sup> As usual, Maitland submitted the new regulations to the Executive Council. By July of 1826 he was able to inform Bathurst that their adoption "with such trifling modifications as local peculiarities required," had been effected.<sup>2</sup> Three reports on the new regulations had been presented by Council. The first was made in October of 1825, when the Council concluded that their adoption would be of great advantage to the province.<sup>3</sup> Facilities for the acquisition of land by the industrious poor still remained, so there could be no objection on that score, and, on the other hand, new opportunities were presented to capitalists. It was maintained that in valuing the land the township divisions would be unnecessary. The proceedings of the District Land Boards would have to be brought to an end by December to make way for the new organization. It would also be necessary to make an allowance to each officer concerned in passing grants, equal to the average amount of his fees. In November the second

<sup>1</sup>July 28, 1825. G 61, page 245.

<sup>2</sup>Q 341, page 15.

<sup>3</sup>Minutes of Council, October 29. Land M, page 424.

report was made.<sup>1</sup> The new regulations were to go into force on the first of January, 1826. A valuation of land by districts would at once be made. The final report appeared in March of 1826.<sup>2</sup> A valuation had been made of all lands, under the three headings of credit price, cash price and average price. It was pointed out that prices varied widely in equally good localities, as "a few settlers or a good road will increase the value of land one hundred per cent."

A table of the allowances to land officers had been formulated as follows:

	£	s.	d.
Surveyor-General .....	410	5	7
Deputy Surveyor-General of Woods .....	47	0	0
Provincial Secretary and Registrar .....	636	11	4
Clerk of Council .....	457	14	10
Attorney-General .....	342	18	7
Inspector-General .....	250	0	0
Auditor-General .....	221	13	4
Agent for collecting fees .....	200	0	0

The extremes in land values, by districts, were as follows:<sup>3</sup>

Home .....	6s. to 4s. per acre
London .....	10s. .... " "
Newcastle .....	6s. to 5s. " "
Midland .....	5s. to 4s. " "
Johnstown .....	6s. to 5s. " "
Ottawa .....	5s. .... " "
Bathurst .....	5s. to 4s. " "
Western .....	4s. .... " "

The changes recommended in these reports were adopted, and the resultant modified system of sales was duly installed in 1826. A Commissioner of Crown Lands was appointed by the Home Government to supervise its workings, and the instructions given to him by the Treasury Lords covered all details.<sup>4</sup> Immediately upon arrival in Upper Canada he was to give security for £5,000, with two sureties in £2,500 each, for the due performance of his duties and payment of all official monies coming into his hands. As soon as possible he was to obtain information as to the waste lands in the unsurveyed districts, as also the surveyed but ungranted districts, and likewise the ungranted lands and Crown reserves in districts where grants already had been made. He was also to collect information concerning lands granted in perpetuity upon payment of quit or other rents, and lands or reserves leased for a series of years. Upon these matters he was required to make an annual report to the Home Government and also to the Lieutenant Governor of the province. He was to see to it that no Crown lands were disposed of save by actual sale or, in the case of poor settlers, by grants subject to quit-rents. Once in each year he was to report to the Lieutenant Governor the total quantity of Crown property in each district, the reserve, and also what description of property, in his opinion, it might be expedient to offer for sale in the ensuing year, with a recommendation as to the upset price per acre.

<sup>1</sup>Minutes of Council, November 21. Land M, page 455.

<sup>2</sup>March 14. Ibid, page 601.

<sup>3</sup>Ibid, page 640.

<sup>4</sup>Minutes of Council, State H, page 431. Printed in Appendix to the 1829 Journals of the Legislative Assembly.



Before making this report, a certificate from the Deputy Surveyor-General of Woods regarding timber fit for the naval service was to be obtained, as it was not intended to sell any land until such timber had been removed.

Upon sanction of sale by the Lieutenant Governor, the time and place of sale in each district were to be advertised in the newspapers and through any other medium deemed advisable, stating the upset price and intimating that lots would be sold to the highest bidder. It was also to be made known that if no offer were made at the upset price the lands would be reserved for future sale, and also that no single lot would contain over 1,200 acres. The conditions of sale were to be stated: that the money must be paid in four instalments without interest, the first at time of sale; the second, third and fourth, at intervals of one year thereafter; that if the instalments were not paid regularly the deposits would be forfeited and the land again referred to sale; that purchasers of not more than 200 acres who could not pay the first instalment or the series of instalments might occupy the land upon a quit-rent equal to five per cent. upon the purchase money, one year's rent to be paid in advance at time of sale, and to be paid annually in advance thereafter upon pain of forfeiture; that this quit-rent was to be subject to redemption upon payment of twenty years' purchase, or by instalments not to exceed four in number with not less than the amount of five years' quit-rent at any one time, the same amount of the quit-rent to cease. As a guard against speculators, it was to be made known that when part of the quit-rent had been paid by one such instalment, that amount would be deducted from the total due, but if no further instalments or quit-rent were paid, the land would be resold at auction as soon as the amount already paid was absolved by the accruing payments of quit-rent due. Annually in each district there was to be given public notice of those persons in arrear for instalments of purchase or for quit-rents, with a warning that if these were not paid up before the next sale in the district their lands would be the first lot to be put to auction. If any surplus remained over after satisfying the Crown it would be paid to the original purchaser who had made default.

No land was to be granted at any time other than that of the current sales, unless applications were received from poor settlers who had not been in the district over six months prior to the last annual sale; such persons might purchase not more than 200 acres at the price offered at the previous sale, either by instalment or quit-rent, as preferred. If any settler wished to take up land in districts not yet surveyed or granted, he might be permitted to do so to the extent of 200 acres, upon condition of a quit-rent of five per cent. upon the then estimated value of the land, redeemable at any time within seven years upon payment of twenty years' rent, and after that time upon payment of twenty years' rent plus any arrears then due. No patent was to be granted to any purchaser until the full amount had been paid, nor was any transfer of the property to be permitted except in case of death. Monies were to be paid only to the Commissioner or his representative, at a time and place to be named in the notice of sale.

The first day of January, 1827, was set as the date when payments from persons who had purchased under the new regulations should commence. The Commissioner was forbidden to sell by auction any land



held for a regular lease-rent, unless it were two years in arrear. Detailed half-yearly accounts of all sales were required; these had to be submitted to the Provincial Auditor, accompanied by a complete cash account of all monies received and expended. Five hundred pounds was allowed for the contingent expenses of the Commissioner's office; all above that sum was to be paid over quarterly to the Receiver-General. Finally, in all matters pertaining to his office the Commissioner was to be responsible directly to the Home Government.

Such in effect was the so-called "New South Wales System" as applied to Upper Canada. It was essentially a system of sales on credit, divided roughly into two classes involving large and small instalment payments respectively. In the case of the small or quit-rent payments it differed noticeably from Prescott's plan. The principal object in view, perhaps, was twofold. By the former system of grants, subject only to fees, charges of favouritism were rife; opponents of the Administration claimed that friends of Government officers were given an unfair advantage in land matters. It was hoped that the new system, with its essential publicity, would do away with so undesirable a situation. This motive was political; there was also a financial one. Always the Home Government desired to reduce to a minimum the expense of colonial administration. The old system of free grants having failed in Upper Canada, and, indeed, in Canada generally, to contribute in any marked degree toward this happy consummation, it was thought desirable to try some other variety of system. It is also to be noted that the same year witnessed the passage through the British Commons of a bill forming the Canada Company, a large-scale land-development concern which purchased the Crown reserves and a considerable area in the vicinity of Lake Huron on an agreement to pay a stated annual sum into the provincial revenues.

A matter of less importance in connection with the land system likewise received adjustment in 1825. Many irregularities had crept into the procedure with regard to cutting of timber on Crown lands. The custom had been to grant Royal licenses to contractors, permitting them to take out timber for sale in the Montreal market. The most extensive field for these operations was along the Ottawa River, but there the inhabitants, incensed at the damage which sometimes was done to their own lands in connection, and jealous of the loss of good timber to future settlers, interfered to such an extent as seriously to handicap the contractors. On the other hand, the contractors claimed that many private persons not properly licensed by the Government were engaged in the trade. Complaints reached the Government, and Secretary Bathurst asked Maitland and Council to devise some scheme whereby difficulties of this nature might be avoided.<sup>1</sup>

The Council duly presented a report,<sup>2</sup> proposing that there should be resident at all times within the province a Surveyor-General of Woods, to whom the contractors should present their licenses before beginning to act upon them. For many years there had been no such officer in Upper Canada. The Deputy Surveyor-General of Woods, Thomas Merritt, had been appointed by Wentworth, Surveyor-General of Woods for British North America, and upon the latter's death the office of Surveyor-General

<sup>1</sup>Bathurst to Maitland, July 22, 1825. Q 371A, page 47.

<sup>2</sup>Minutes of Council, State G, page 117.

of Woods had ceased, causing no small embarrassment, for "there was not recently, if there is now, any officer in America from whom the requisite authority in this province could be derived." Under the superintendence and check of such an officer the licenses might no longer be made "the cloak of great abuses." The Council had had a great deal of trouble with disputes between contractors and private owners, and no one was satisfied with their decisions. As a chief means of ending this confusion, the Council considered it would be advisable to throw open the timber trade on Crown lands upon payment of a duty per square foot, to be collected "before the timber passes the Falls of the Chaudiere," and at such other points as might be set. Officers should be stationed at these points for the purpose. To prevent the cutting of young trees, a double duty should be imposed upon such as were below a certain standard. Here the Council stumbled unwittingly upon a truth which often is too little regarded in industrial administration, "for it has been found, notwithstanding all attempts to restrain trespassers, that a quantity equal to the demand has generally found its way into the market." This circumstance was cited as the principal cause for action.

The Council concluded its report by pointing out the need for similar regulations in Lower Canada, at least so far as concerned the other bank of the Ottawa. A reference to this effect was transmitted to Quebec, and not long afterwards the Executive Council of that province drew up a parallel set of regulations. The Government of Upper Canada was notified, co-operation became automatic, and the new scheme went into effect.<sup>1</sup> A proclamation announcing it was posted on May 3, 1826,<sup>2</sup> and in due course the office of Surveyor-General of Woods and Forests in Upper Canada was added to that of Commissioner of Crown Lands.

The main outlines of the change in land system having been applied, minor details came up for settlement. As soon as the Land Boards were abolished there arose the question of ascertaining the performance of settlement duties, formerly certified before the Boards. It was thought sufficient to take the oath of the settler, attested by two disinterested persons before any magistrate of the district where the land lay.<sup>3</sup> Then, in November of 1826, action was taken toward limiting the time within which purchasers should become resident on their lands. The Council decreed that all grants must be located within six months from the date of the Order in Council, "as otherwise much inconvenience will arise."<sup>4</sup> Another decision, reached in July of the same year, was to the effect that in all cases of land grants without purchase under the new regulations, those clauses relating to the terms and conditions of the grants were to be subjoined to the ticket of location, to be delivered to the applicant at the time of location.<sup>5</sup> Finally, late in the year, Bathurst permitted military grants to be extended to officers who had retired from service upon sale of their commissions, and also to soldiers who had entered the service since the recent war.<sup>6</sup>

<sup>1</sup>Minutes of Council, March 22, 1826. State H, page 213.

<sup>2</sup>Ontario Archives, 1906, page 319.

<sup>3</sup>Minutes of Council, March 8, 1826. Land M, page 566.

<sup>4</sup>November 1. Ibid, page 694.

<sup>5</sup>July 5. Ibid, page 646.

<sup>6</sup>November 30. Q 371A, page 147.

A matter of immediate concern to the land officers, and one upon which their opinion already had been made known to the Home authorities, was that of the commutation of fees. Because of the change in land system it was obviously necessary to abolish fees and grant allowances in their stead. A schedule of allowances was presented by Council and accepted by the Home authorities, but the time of its application was limited to seven years. Accordingly in 1833 the matter again came up. This time, at Lieutenant Governor Colborne's request, the Executive Council formulated a report urging that the arrangement be continued and made permanent.<sup>1</sup> Colborne personally recommended the same course of action, and the Home authorities gave consent in the case of officers who were in possession of their offices before 1826, but no others.<sup>2</sup> This decision barred the Inspector-General, Surveyor-General, Attorney-General, Clerk of Council and Auditor-General. However, permission was granted to increase the salaries of these officers sufficiently to cover any loss, and presumably satisfaction reigned in all branches of the Lands Department.

Meanwhile the popular agitation concerning tenure of land by aliens had increased, and the Home Government felt the necessity of action. In July of 1825 Bathurst informed Maitland that it would be advisable to confer by legislation the civil rights and privileges of British subjects upon such United States citizens as, being previously settled in Canada, had been declared aliens by His Majesty's Law Courts. Disbanded officers and soldiers of foreign corps which had been in British service should be included in the same Act, as also such other foreigners in Canada as were in truth aliens, although they had hitherto enjoyed without question the rights of British subjects. It was stated that should such an Act be passed, the Home Government would sanction it.<sup>3</sup> In the same letter Bathurst expressed a desire to receive the heads of such enactments as, in Maitland's judgment, would place the naturalization of foreign immigrants in Upper Canada on a secure and convenient basis. Maitland referred this request to the Provincial Parliament, whereupon a tentative bill was framed in the Legislative Council and sent down to the Legislative Assembly for confirmation.

Briefly summarized, this measure provided that on and after the date of its enactment all persons who were resident in Upper Canada should be deemed natural-born subjects, "so that no estates of what nature or kind soever" held by them, or to be held, should be liable to seizure by His Majesty. The Assembly opposed this bill strongly, on the ground that although it gave full assurance of land ownership, it did not confer the franchise and right of election to Parliament.<sup>4</sup> It was returned with an amendment to that effect, but the Upper House appeared extremely unwilling thus to place political power in the hands of what undoubtedly was one of the most democratic sections of the population.

<sup>1</sup>August 8, 1833. Minutes of Council, State J, page 118.

<sup>2</sup>Q 384A, page 3.

<sup>3</sup>Q 371A, page 43.

<sup>4</sup>Referring to the words "so that," as quoted, a leading Reformer wrote: "The viper is seen coiled in a bed of fragrant violets, ready to distil its venom, and inflict a fatal wound upon the fairest hand." Q 343, II, page 342. John Rolfe to Horton.



Following this action the Assembly formed itself into a Committee of the Whole, and drew up, in late December, a series of resolutions addressed to the King, intended to express clearly its sentiments in the matter. It was pointed out that a large portion of the inhabitants of Upper Canada consisted of persons born within allegiance to the British Crown, but resident in the United States of America after the treaty of 1783, that these persons afterwards came to Upper Canada in large numbers, and except for a condition of seven years' residence, were considered citizens in good standing. Such persons should be accounted by British law to be natural-born subjects, both because they were loyal and because such an interpretation of the law could do no harm. A large part of the land in the province was held, or had been held by them and hence much trouble would ensue were they classified as aliens. Reference was made to the recent bill sent down by the Legislative Council, and to the Assembly's amendment of it. The address concluded with a statement to the effect that only the Imperial Parliament could settle the matter permanently, and a suggestion that that body be requested to take action at once.<sup>1</sup>

A further address from the Assembly was presented in January of 1826.<sup>2</sup> It emphasized the fact that land was the chief basis of public credit, and drew attention to the existing depression in land values, a depression which threatened much distress. Population, it claimed, was essential to the agricultural interests, and hence to the general prosperity of the country; by the existing colonial policy much United States immigration and wealth was barred out altogether, although such immigrants within the province had served faithfully in the war. It terminated with a request that persons from the United States be allowed freely to settle and buy land in the province, though they should be subject to the condition of seven years' residence before receiving full political privileges. This address, in common with all others, was transmitted through the Lieutenant Governor. His remarks upon it show the innate conservatism of the man. First he claimed that no land depression existed, because land sold for more than it had before the war; at the same time he asserted that the real trouble was to find purchasers for the large tracts then in the market. The relation between price and demand seems never to have occurred to him. Then he hinted that British capital was preferable to United States capital in any matter of land purchases; Upper Canada being a British colony, he considered it safer that United States immigrants be kept out. He admitted that most of the United States residents had behaved well during the war, but reminded Secretary Bathurst that some did not. From these criticisms Bathurst took his cue, and in his reply to the address<sup>3</sup> said he was sure the Assembly "would see with extreme regret the adoption of any system which could interfere with measures now in contemplation for the encouragement of emigration from the United Kingdom to Upper Canada." With this diplomatic currant-bun the infant Assembly perforce had to be content.

<sup>1</sup>Q 343, II, page 352.

<sup>2</sup>Q 340, I, page 18.

<sup>3</sup>June 10, 1826. Q 371A, page 114.



Early in 1826 the Legislative Council also sent an address to the King, relating the failure of their endeavours to induce the Assembly to concur with them in an Alien Bill, and asking His Majesty's Parliament to settle the matter. A long set of arguments against the statements made by the Assembly was embodied in the address.<sup>1</sup> In February, Maitland referred the matter to the Executive Council. That body suggested that, as there appeared small likelihood of amicable settlement by the Legislature, it would be as well to appeal to the Imperial Government.<sup>2</sup> In any bill to be passed in this connection, provision should be made for the repeal of the existing Alien Acts, which were quite inapplicable to the new conditions. Provision also should be made for the conferring of British citizenship upon any alien arriving in Upper Canada, upon condition of seven years' residence, but none such should be permitted to become members of the Privy Council, Legislative Council or Legislative Assembly, or to hold any civil or military office. This proposal was an advance on that of the Legislative Council, but was far from satisfying the Assembly. Accordingly Bathurst sent to Maitland a copy of a bill enabling persons naturalized by Act of the Provincial Parliament to sit in either House of that Parliament, expecting that it would allay the dissension. Any such Naturalization Act, however, was made subject to revisal by the Imperial Parliament, a fact which indicates the importance attached to the matter in London. He further intimated that only seven years' residence and the taking of the oaths should be required by any Provincial Act. In the matter of lands claimed by descent or purchase from aliens, every effort would be made to avoid injustice to innocent persons.<sup>3</sup>

As a result of this information the Upper Canada Parliament passed two bills—one to provide for the naturalization of persons resident in the province, and the other to confirm British subjects in their titles to lands in Upper Canada derived through aliens. These bills were reserved for His Majesty's pleasure, as specified by Bathurst, and were held up by the Imperial Parliament until it should appear whether the Upper Canada Parliament was disposed to pass bills more acceptable to the people of Upper Canada. The reason for this move lay in the fact that a number of petitions against the bill as not giving full relief had been received by the Government.<sup>4</sup> Bathurst suggested that all persons who at any time had received grants of land in Upper Canada, held public office there, or had taken any oath of allegiance at any time, as well as all who had been settled in the province in the year 1820 or before, should be given full rights of citizenship without the imposition of further conditions. Of all others should be required seven years' residence and taking of the oaths. The property of all persons becoming naturalized by such an Act would be legalized. In general, no person should be dispossessed of his own or his ancestors' lands on account of his own

<sup>1</sup>Q 343, III, page 492.

<sup>2</sup>Minutes of Council, State H, page 195.

<sup>3</sup>Q 371A, page 131.

<sup>4</sup>A sample petition is given in Q 345, I, page 168. It describes the long division of opinion in the Assembly, a tie in Committee of the Whole, and a tie in the House for a full week, with the question negatived four times by the casting vote of the Speaker.

or his ancestors' legal birth, and those who had been so dispossessed should have their property restored.

Against this eminently wise, generous and far-sighted decision Maitland and the reactionary element in the Government continued their senseless opposition. The Lieutenant Governor was "mortified" at the victory of "an unworthy and falling faction"; he hinted darkly at the "double allegiance" these United States persons would have as they sat in Parliament and directed the destinies of Upper Canada. But the Home Government, having acquired a knowledge of the true situation, refused to give way; the bill was framed, sanctioned by His Majesty, and became law. The matter of lands was included, although the Home Secretary had advised its embodiment in separate form. Under the authority of this Act, the naturalization of numerous landholders, with the consequent legalization of their holdings, became a matter of fact, and the province was saved a long and costly period of land disorganization.<sup>1</sup> It is interesting to note that the Home Government wished it to be distinctly understood that the ordinary rules respecting naturalization of aliens had been relaxed on this occasion, not as being in themselves unimportant, but as being inapplicable to the very peculiar situation of the persons immediately concerned.

A report on the Crown lands of the province was compiled by the Surveyor-General in 1826, in response to a circular letter addressed to the governors of the several North American colonies requesting information on that subject.<sup>2</sup> The estimated total quantity of surveyed lands in Upper Canada, omitting Crown and clergy reserves, Indian reservations and school lands, was 9,319,569 acres. From 1804 to 1824, inclusive, orders for land had aggregated 3,500,000 acres; prior to 1804 they had totalled 4,500,000 acres. Hence the remaining ungranted lands amounted to 1,319,569 acres. Between 1804 and 1824 the grants to military claimants and United Empire Loyalists, with their children, had amounted to 1,125,300 acres; the grants to reduced officers, soldiers and sailors had totalled 346,900 acres. To emigrants and other settlers, 1,231,000 acres had been given. Surveyors' compensations had totalled some 228,000 acres. Large special grants accounted for the balance of 107,800 acres. Until 1818 settlement duties had not generally been enforced, save along the principal roads and in certain townships; since that year they had been enforced with some rigour. As a rule the quality of the land was good. The ungranted land also was good, but it was farther from navigable waters and roads, and hence was less valuable. The most valuable land sold as high as twenty shillings per acre. An average value would be roughly about 5s. 1¼d. currency per acre. This report covered the period preceding the introduction of the sales system, and shows the scale on which free grants had been made. The excess of privileged and special grants, with surveyors' percentages, over those of regular settlers, is especially noticeable.

In July of 1827 Peter Robinson was appointed a member of the Executive Council. Robinson had undertaken a large-scale Government-aided scheme of immigration from the south of Ireland, had met with

<sup>1</sup>Statutes of Upper Canada, 1791-1831, page 544.

<sup>2</sup>Q 340, II, page 476.

considerable success, and was now to be given a larger sphere for his activities. This appointment was followed in October by one to the Legislative Council.<sup>1</sup> But the special office to which there were adjuncts came in August, when Secretary Goderich gave him notice of appointment to be Commissioner of Crown Lands and Surveyor-General of Woods and Forests in Upper Canada.<sup>2</sup> Early in 1828 the Council ordered the Surveyor-General of Lands to furnish the Commissioner with all necessary information concerning lands in the province, along the lines indicated in the latter's instructions from the Home Government.<sup>3</sup> With this appointment the New South Wales system may be said to have been launched fairly on its course.

The time which had been set for selling lands to pay off assessments in arrear now being imminent, the original opponents of the wild lands tax began to make a strenuous effort to have it repealed. Messrs. Clark and Dickson, of the Legislative Council, headed the movement, and sent down a petition to the Legislative Assembly. That body referred it to a select committee, before which these two worthy landowners did not scruple to appear and give evidence against the tax. The arguments used were of the greatest variety.<sup>4</sup> Some critics objected because a flat rate was used instead of taxing the land in proportion to its value, or because the tax was imposed on unproductive property, or because it affected the interests of non-resident owners. The Act was deemed especially objectionable because it was "totally regardless of the interests of married women, infants and idiots, who have not the legal means of obeying these statutes and obviating the forfeitures." Such solicitude on the part of large landowners was not without its humorous side. Another objection was the "enormous" sum which accumulated at the end of the eight years, a sum which it was claimed could not be paid by the proceeds of the sales. Another claim was to the effect that the spending of the proceeds on road-building was wasteful, inasmuch as the best way of constructing highways was by granting turnpikes to contractors—the "toll-road" system.

Counter-petitions refuting the arguments of the landowners were not long in appearing,<sup>5</sup> and the contest became keen. Even so thoughtful a man as Dr. Baldwin, father of Robert Baldwin, believed the continuance of the tax would mean ultimate ruin to the province, through aggravation of the existing depression in land values. Thus "James Parks sold 200 acres for a cow in Douro," while "Moody Farewell bought from William Huntingdon 500 acres in Brock for as much lumber as built a house in Whitby, thirty feet by twenty feet." The Assembly drew up a report embodying the evidence submitted.<sup>6</sup> But the benefits already derived from the tax were so obvious, and the prophecies of ruin from so small a rate were so ludicrous, that the attempt to rescind the Act failed. In March of 1828 it was amended to permit persons in certain cases to pay to the treasurer of their own district their taxes on lands owned elsewhere.<sup>7</sup>

<sup>1</sup>Q 371A, pages 229 and 246.

<sup>2</sup>Ontario Archives, 1906, page 327.

<sup>3</sup>Minutes of Council, February 26, 1828. State H, page 446.

<sup>4</sup>For a sample petition see Q 346, II, page 525.

<sup>5</sup>E.g. Q 346, II, page 538.

<sup>6</sup>Appendix to the Assembly Journals for 1828.

<sup>7</sup>Statutes of Upper Canada, 1791-1831, page 464.



The new system of sales, aided by the improved regulations for the timber trade and the recognized permanency of the wild-land taxation, met with only minor difficulties in the first year of its active operation. Some confusion existed as to the status of military grants under the new regulations. Maitland referred the matter to the Home Government, from whom a reply came in April of 1829 to the effect that half-pay officers of the army and navy, as also non-commissioned officers, soldiers and sailors, should receive grants as under the old system.<sup>1</sup> In this connection an unusual case had come up for decision early in the previous year through the petition of an officer named O'Hara, who held the rank of Assistant Quartermaster-General of Militia in Upper Canada, and formerly had held the rank of Lieutenant-Colonel in the Portuguese service. O'Hara, who had been awarded the Order of the Tower for his services, requested a grant of land proportioned to his foreign rank, and the petition was transmitted to London for decision. It was granted, since it appeared that rank in the service of Britain's old ally had been recognized on previous occasions.<sup>2</sup>

Illustration already has been given in the story of the attempt to stimulate hemp culture, of the use of Crown lands in encouraging an agricultural pursuit. Another grant, made in 1828, affords an illustration of their use in encouraging a manufacturing industry. A man named Hayes had erected an ironworks at Marmora, in the Midland district, but the project met with failure. He petitioned the Home Government for aid on the ground that the industry was a provincial benefit, claiming that he had expended over £30,000 on it before his almost total failure in 1825. In recognition of these services and as an inducement to others who might entertain similar schemes, he was granted 10,000 acres, with a promise of employment in some state capacity as soon as possible.<sup>3</sup>

Early in 1829 Surveyor-General Ridout died and was succeeded temporarily by Chewett. In September the duties of the office were formally vested in Samuel P. Hurd. A number of minor regulations were put into force this year. There had been frequent attempts to misuse the privilege of applying for lots supposedly forfeited through non-performance of settlement duties, so it was ordered that no forfeited lots should be re-located to persons ordinarily entitled to grants, but that they should be placed at the disposal of the Commissioner of Crown Lands.<sup>4</sup> In this way a stop was put to a most undesirable practice of giving false evidence with respect to the settlement duties on desirable lots with a view to having the grants cancelled and reassigned to the informants. It was further decreed that in future those entitled to Crown lands must select lots not previously assigned on any ticket of location.

The confiscation of "estates of traitors" had been allowed to proceed at such a rate that Government now felt it necessary to call a halt. An Act was passed forbidding further confiscation and making provision for adjusting claims in the case of estates wrongly confiscated.<sup>5</sup> Con-

<sup>1</sup>Minutes of Council, April 3, 1829. Land O, page 35.

<sup>2</sup>Q 372A, pages 3 and 19.

<sup>3</sup>Q 350, I, page 186.

<sup>4</sup>Minutes of Council, March 5, 1829. Land N, page 477.

<sup>5</sup>Statutes of Upper Canada, 1791-1831, page 491.



fiscated lands formerly had been thrown open to incoming settlers, quite naturally resulting in abuse of the law of confiscation. Another matter which called for correction was that of false claims for deficiencies in areas of grants, sometimes associated with inaccurate surveys or other legitimate cause. The Council decided that in future no such claims would be entertained.<sup>1</sup> Perhaps this decision was influenced by a desire to wind up as speedily as possible all business under the old regulations. Already its volume was lessening; Colborne reported in September that it would continue so to decrease in proportion to the quantity of lands granted.<sup>2</sup>

In May it was decided that those tracts of land along the Niagara, St. Clair and Huron frontiers which had been set aside by the Provincial Government for military purposes should be leased, thus creating an additional source of Crown revenue.<sup>3</sup> These tracts did not include the regulation allotments for works of defence, of which there were a number scattered throughout the province. In the same year the Ordnance Department took over the entire management of these permanent reserves, and patents were given where works had been erected.<sup>4</sup> About the same time Colborne set aside some 5,000 acres near Penetanguishene for a military reserve.<sup>5</sup>

In May of 1829 came the first report on the saleable and grantable Crown lands of the province.

Eastern District.....	1,603 acres
Ottawa " .....	102,148 "
Johnstown " .....	8,036 "
Bathurst " .....	206,466 "
Midland " .....	405,069 "
Newcastle " .....	384,887 "
Home " .....	379,804 "
Total of .....	1,488,013 "

The remainder consisted of "large tracts" north of Lake Simcoe and in the rear of Newcastle and Midland districts which had never been surveyed. Commissioner Robinson was not optimistic of any substantial returns from the sale of Crown lands in less than seven or eight years, because the best lands had been sold to the Canada Company or set apart for the University.<sup>6</sup> It is worthy of note that Robinson thought the system of quit-rents objectionable.

Lieutenant Governor Colborne also had been giving some thought to the land system, more especially with reference to the disposal of settlers upon their arrival. In April of 1829 he suggested to the Home Secretary a new scheme.<sup>7</sup> First he pointed out that 27,000 emigrants, many with capital, had arrived at Quebec during 1827-28, but most of them had gone to the United States because no exertions were made to direct them to Upper Canada. But this year it was his intention to encourage the agents at Quebec and Montreal in sending emigrants

<sup>1</sup>Minutes of Council, Land N, page 520.

<sup>2</sup>Q 352, page 74.

<sup>3</sup>Q 351, II, page 379. Also Q 373A, page 69. These reserves originally totalled about 6,500 acres, but had been depleted by grants.

<sup>4</sup>Minutes of Council, Land N, page 545.

<sup>5</sup>Q 354, page 195.

<sup>6</sup>Colborne to Hay, Q 351, I, page 94.

<sup>7</sup>Q 352, page 4.

thither, to disembark these at Prescott and Cobourg, on Lake Ontario, and to open the township of Ops for their reception. By placing six or seven hundred persons in a township at the same time, and preparing for their reception by building small houses and collecting supplies to be sold to them at a cheap rate during the first six months, the value of land in their neighbourhood would increase and become an attraction to settlers of means. It should not be very long before the population would become sufficiently dense to insure good roads. Any Crown reserves in the neighbourhood also would benefit. The initial expense of the project would be small, and if it succeeded one year, could be repeated the next. He concluded with a request for permission to charge the expense to the Home Government.

Colborne's instructions to the Commissioner of Crown Lands concerning the settlement of Ops give his plan in detail.<sup>1</sup> The Commissioner was to have an agent resident in the township, from whom the emigrant would receive a license of occupation upon giving satisfactory evidence of intention to settle, at the same time being required to pay one year's interest on the purchase money for his land. The price set was that fixed by the Commissioner's valuation of Crown lands in that township—four shillings currency per acre. The agent was to conduct the new settler to whatever land he had chosen, no fees of any sort being charged. To avoid loss of time in reaching the township, another agent was to meet the emigrants at Cobourg or Prescott, furnish them with adequate information concerning the country, and direct them to a depot at Peterborough, at the head of navigation on the Onataba River, where another agent was to direct them to Ops. The resident agent was to supervise the erection of a log house on each lot chosen, and two months' provisions might be furnished free by Government to the family of any emigrant while he was thus engaged in securing land and house.

So confident was Colborne of the success of his plan that he embarked upon it before receiving definite permission from the Home authorities. Hence Secretary Murray, in acquiescing, criticized him for authorizing the erection of houses and the issuance of provisions without having previously submitted these matters to his consideration and decision, and concluded by drily expressing the hope that Colborne's expectation of defraying the expense through the increased value of other lands in the vicinity might not be disappointed.<sup>2</sup>

For once, however, official fears were unfounded, and Colborne's scheme of "help the emigrant to help himself" met with a fair measure of success. In 1831 he was able to report to Secretary Goderich that four thousand emigrants had disembarked that season at Cobourg, of whom over three thousand had been located in Oro, Dummer and Douro townships.<sup>3</sup> These persons came principally from Wiltshire and Yorkshire; being destitute they had been sent out by subscription from those counties. Before receiving their location tickets all of them signed agreements binding themselves to pay for their lots at the rate of five shillings per acre, by instalments extending over six years.<sup>4</sup> The follow-

<sup>1</sup>Q 351, II, page 388.

<sup>2</sup>Q 372A, page 135.

<sup>3</sup>Q 357, I, page 80.

<sup>4</sup>Q 374, II, page 504.

ing year Colborne reported that the Township of Oro would soon have "the appearance of an old township," proving the correctness of his claim as to increasing the price of neighbouring lands. At the same time he announced the appointment of permanent emigration agents at Prescott and other towns for the purpose of co-operating with various emigration societies which had been formed within the province. These societies did good work by employing newly-arrived emigrants on public roads in their respective localities, the Government financing any society which opened one road in this way.<sup>1</sup> The emigration agents were instructed to keep closely in touch with the societies in order that settlers might lose no time in finding work on the roads.<sup>2</sup> Secretary Goderich authorized their employment in clearing lands for occupation whenever the roadwork could not afford sufficient work for all.<sup>3</sup> The expense involved in "subsisting and locating emigrants," June 18, 1832, to February 23, 1833, totalled £7,558 6s. 11d.<sup>4</sup>

As a commentary on this scheme of settlement may be taken a Report on Provincial Progress compiled for Colborne, and by him forwarded to the Home Government in October of 1830.<sup>5</sup> It stated that the settlers of Gwillimbury, Vaughan and Markham townships of the Home district, who were principally from the United States and had come into the province at an early date, were now affluent farmers. The settlers in Peterborough, Cavan and Monaghan, mainly Irish, also had succeeded. The military settlers in Bathurst district, though on but indifferent land, were independent. On the other hand, the progress of the Glengarry settlers had been slow, because many of them had been engaged in the lumber trade on the Ottawa. After commenting on these different types, the report concluded thus: "If a few townships had been first settled and organized before others were opened for location, the colony would have been easily managed, and a territorial revenue would have been created sufficient for the support of the civil government." This report adverted to the success of the experiment in Ops Township, and advocated its continuance.

In May of 1830 an attempt was made to prevent the recipients of naval and military grants from selling their location tickets, an evil which still persisted. A new form of location ticket was devised; settlement duties were defined as the clearing and fencing of five acres for every hundred granted, the building of a house sixteen feet by twenty feet, and the clearing of half the road in front of each lot. The filing of a certificate of duties performed was required within two years from the date of location. These requirements fulfilled, the applicant would receive his patent only after actual residence for five years.<sup>6</sup> Later in the year settlement duties for other kinds of grants were revised in the same way, with a view to ensuring the construction of passable roads everywhere throughout the settlements. The grantee in each case was required to clear the usual half of the road. This time, however, the term "clearing"

<sup>1</sup>Q 374, III, page 566.

<sup>2</sup>Instructions to Agents may be found in Q 374, III, page 570.

<sup>3</sup>G 69, page 37.

<sup>4</sup>Minutes of Council, State J, page 147.

<sup>5</sup>Q 354, page 304.

<sup>6</sup>Minutes of Council, May 14, 1830. Land O, page 245.

was defined as the removal of all wood and underbrush, the cutting down of all stumps for a distance of ten feet from the centre of the road low enough for a waggon wheel to pass over, and the sowing of the cleared space with grass seed.<sup>1</sup> Upon proof of this duty performed and also two years' residence, a patent might issue without further condition. But where there was no residence, either in person or by proxy, no patent might issue until the locatee cleared all timber from the front of his lot for the space of a chain in depth. The time for presenting proof of duties performed in either of these ways was limited to two and a half years. But the continued tardiness of applicants in presenting themselves for this purpose, or, indeed, for their patents, was amazing. In December of 1830 the Council refused to make a certain grant on the ground that "petitioner had neglected for more than forty-five years to apply for his patent."<sup>2</sup>

Late in the year 1830 a petition of a most unusual character was received by Secretary Murray.<sup>3</sup> It came from former Commander Valentine Starbuck, of the private British ship "*L'Aigle*," then resident in Bytown, Upper Canada. The petitioner related how, in the course of two voyages in the South Seas, in command of this ship during the years 1819 to 1823, he had called in at the Sandwich Islands, "the king and people of which islands invariably displayed the utmost veneration for the name and Government of His Britannic Majesty," and were well disposed toward British subjects. On the occasion of the second visit the king and queen of the Islands "expressed an ardent desire to visit Great Britain" for the purpose of entering upon a treaty of amity and placing their domain under British protection, "being apprehensive of the daily growing influence and power of both the Russians and the United States of America in the Pacific Ocean." Starbuck, thinking the islands of importance to Britain, brought king, queen and retinue to England, going to considerable expense to provide them with suitable quarters. On retiring from sea service he had emigrated to Upper Canada, where as yet he had not received any grant of land. His petition requested a grant proportioned to the expense and trouble of his diplomatic labours in the South Seas, for which he never had been remunerated. Possibly the tardiness of the Government in rewarding so diligent a servant was related to the circumstance of the death in London, from measles, of both Kamehameha and his queen.

Consequent upon an address from the Assembly in March of 1831, the Council passed a minute to the effect that there did not appear to be any fixed period within which militia claims should cease, that all claims for military and naval lands were still acted upon, and that the like indulgence should be continued in the case of militia claimants.<sup>4</sup> But already the Home authorities had decided to remove from the system of sales the anomaly of a practice of military free grants. As the result of a General Order issued on February 24, 1831, by direction of the Commander-in-Chief, regulating the sale of lands in the Australian colonies, a similar course of procedure was ordered for the colonies in

<sup>1</sup>Minutes of Council, November 20, 1830. Land O, page 348.

<sup>2</sup>Ibid, page 371.

<sup>3</sup>Q 355, page 220.

<sup>4</sup>Minutes of Council, April 22, 1831. Land O, page 443.



North America. The letter putting it into effect was read in Council in November, and in the usual way it was ordered that in future all officers must purchase their lands, receiving in lieu of the former free grant a remission in purchase money, proportioned to their rank and length of service, as follows:<sup>1</sup>

Field officers, 25 years of service .....	£300
“ “ 20 “ “ “ .....	250
“ “ 15 “ “ “ or less .....	200
Captains, 20 years of service .....	200
“ 15 “ “ “ or less .....	150
Subalterns, 20 years of service .....	150
“ 7 “ “ “ or less .....	100

By a memorandum from the Admiralty Office in March of 1832, sent in a circular despatch to Colborne, naval officers were given similar privileges, commanders or higher officers to rank with army field officers, lieutenants, warrant officers and captains of the Royal Marines with captains, and subalterns and surgeons of the Royal Marines with army subalterns.<sup>2</sup>

But a change of greater importance was in progress. In 1830 there had been founded in England the Colonization Society, having as its object the substitution of systematic colonization for mere emigration. Gibbon Wakefield was its principal promoter. His basic theory was that Crown lands should be sold and not given away, and that at least part of the proceeds should be applied as an emigration fund. The formula appears simple now; it was revolutionary then. It was thought that the price for which lands were sold should be sufficient to ensure that labourers would remain such for a reasonable time rather than becoming land-owners at once. In this way it was hoped to retain a sufficiency of labour within the colony, which circumstance in turn would attract capital for its rapid development. Through his influence with Lord Howick, Under Secretary for the Colonies, Wakefield managed to secure the adoption of his scheme, thus opening out a new policy respecting colonial Crown lands.

In Upper Canada the new regulations were grafted on the old. In March of 1831 Goderich informed Colborne that some of the heads of Instructions by which the Commissioner of Crown Lands was governed were open to serious objection. The precise clauses alluded to were those which had reference to the disposal of Crown lands on a quit-rent; “I altogether disapprove of this system, and I desire that the practice may be immediately stopped.”<sup>3</sup> Accordingly a new set of Instructions for the Commissioner, containing no quit-rent clauses, was promulgated. In addition, it was stipulated that persons desirous of purchasing in unsurveyed situations must pay for a survey; the Crown, moreover, reserved to itself the right of constructing all roads and bridges. The application of the new policy affected emigration to Canada but little because of the amount of spontaneous emigration already under way. But it was otherwise in the case of Australia, to which, as a result, some three thousand female settlers were sent out between the years 1832 and 1836.

<sup>1</sup>Minutes of Council, November 16, 1831. Land P, page 65.

<sup>2</sup>Minutes of Council, Land P, page 293.

<sup>3</sup>Q 396, I, page 299.

Late in 1831 Colborne was moved to remark upon the increase in the volume of land business. The work of the Council was greatly increased thereby, while the Surveyor-General's office was become "of the greatest importance."<sup>1</sup> A chief reason was the unusually large influx of emigrants, estimated by the Lieutenant Governor at 30,000, mainly British, and of a good type. The population was now some 234,000; the formation of Prince Edward County into a separate district was a local indication of the general increase. Immigrant labourers in summer received twelve dollars per month, and the demand for them was so large that any number might find work. Of course, new settlers were not so favoured by the farmers as those accustomed to the country; moreover, the former often had to travel far inland before finding work. It appeared wonderful to British eyes that in this new land mechanics and labourers, as soon as they had saved forty or fifty pounds, should buy land and perhaps in a few years themselves be employing workmen.<sup>2</sup> The whole expense of the work of settlement under Colborne's scheme in this year was less than £5,000.

A rather serious state of affairs in the office of the Surveyor-General was brought to Colborne's attention in 1832. It appeared that certain of the clerks had been privately engaged by outsiders as confidential agents for the purchase of lands. The result of this discovery was an Order in Council, dated November 24th, apprising heads of departments that in future no clerk in their respective offices was to transact any business connected with the granting of lands, or to receive any memorials whatsoever respecting land patents or locations.<sup>3</sup>

Earlier in the year another procedure with respect to settlement duties had been introduced. There were only three classes of settlers to whom these duties now applied, viz., officers receiving land under the recent regulations, militia claimants, and children of Loyalists. As the first-named class purchased lands at the public sales upon condition of residence, while militia claimants and children of Loyalists received free grants, Colborne considered any regulation unnecessary. Accordingly by Order in Council of May 24th, it was dispensed with, but it was expressly stipulated that no patent be given until it was ascertained that a resident settler was on some part of the grant. The Order in Council of May 14, 1830, which applied exclusively to discharged soldiers and sailors, was to remain unaffected by this new arrangement, but in their case the term of residence was shortened to three years.<sup>4</sup>

Two further changes in the existing regulations were effected in November. By the first of these, officers were permitted during the first six months after their arrival in the country to select and buy their lands otherwise than at the public auctions. The other change was made with a view of solving the old difficulty of the purchase of Loyalist rights. From an early date these rights had been bought by speculators. The regulation of 1818 imposing certain duties on Loyalist grantees had met with failure; false certificates of duties performed constituted a chief means of evading it. Finally the regulation was repealed, principally

<sup>1</sup>Q 357, II, page 282.

<sup>2</sup>Colborne to Goderich, Q 357, I, page 130.

<sup>3</sup>Minutes of Council, State J, page 76.

<sup>4</sup>Q 357, II, page 282.

because the Assembly objected to any restriction on Loyalist grants. The regulation now passed allowed the granting of locations to purchasers of Loyalist rights only upon condition of settlement in person or by deputy. As a preventative of speculation this measure failed dismally; speculators used it as a means of obtaining location tickets for the rights they already had purchased. One of the chief offenders in this way was no less a personage than Chief Justice Elmsley. His actions were reported to Colborne, who suggested to the Executive a further measure against the practice. It was passed late in 1833; by it no Loyalist or militia claims were to be allowed save upon condition of actual settlement by the parties found entitled, nor could any deed issue unless they had been on their land for two years.<sup>1</sup> If the applicant could prove residence in person to be impossible, the Commissioner of Crown Lands might issue a ticket entitling him to the price at which the said land would sell at the public auctions, the sale to take place at as early a date as possible thereafter. Elmsley opposed this measure vigorously, and used unnecessarily violent language in connection, for which he afterwards had to apologize to the Lieutenant Governor. Then he resigned his position.<sup>2</sup>

Colborne's settlement scheme continued to thrive. In his address to the Assembly in January of 1832 he urged the members to use their influence to organize in their respective counties additional societies for the assistance of emigrants. In October, in another address, he informed the members that the population had increased by one-fourth during the past year, and alluded to the anticipated increase in the flow of emigration.<sup>3</sup> It is to be noted that the Imperial Government was discouraging more and more the sending of land applications to its own offices, and constantly was referring applicants directly to the Provincial Government. The immigration in this year not only was large, but was of a substantial type; it is said that 300,000 sovereigns were deposited in the Bank of Upper Canada by the incoming settlers of that one summer.<sup>4</sup> Unfortunately this year witnessed an outbreak of cholera amongst British emigrants. So violent did it become that some owners of boats on the St. Lawrence and Lake Ontario decided to discontinue service. Colborne came to the rescue of the unfortunate emigrants with a circular letter addressed to "The Proprietors of Steam Vessels on Lake Ontario," in which he asked them to continue their sailings, pointing out the "distress and inconvenience" that would be occasioned otherwise.<sup>5</sup> His entreaty had the desired effect, although it was some time before the plague, which had appeared in Montreal and even in Prescott, subsided. The Assembly took up the matter to good effect by granting money for the relief of sick and destitute emigrants at Prescott.<sup>6</sup>

A feature of the growing interest in emigrant-settlement policies was the appointment by the Home Government in 1832 of a Chief Agent for the Superintendence of Settlers and Emigrants in Upper and Lower Canada.<sup>7</sup> In addition, Colborne decided to appoint a special agent for

<sup>1</sup>Minutes of Council, November 8, 1833. Land Q, page 212.

<sup>2</sup>Q 381, I, page 48.

<sup>3</sup>M 173. (Emigration, Miscellaneous Mss., 1792-1863).

<sup>4</sup>Kingsford's History, Vol. X, page 251.

<sup>5</sup>Q 374, IV, page 812.

<sup>6</sup>Statutes of Upper Canada, 1832-34, page 105.

<sup>7</sup>Q 376A, page 10.



Upper Canada, who should go to Montreal for the purpose of directing emigrants to that province, occasionally visiting the different points of disembarkation on Lake Ontario and the Ottawa. About the same time came a proposal from Robert Shireff, son of the founder of the Ottawa timber trade, "for opening a direct communication between Montreal and Lake Huron by means of the Ottawa" as a means of settling the country.<sup>1</sup> The first suggestion of this nature had been made by his brother in 1824, in a pamphlet published in London. Father and son spent much time seeking a possible route for a canal, the financial basis of its construction to be a company which might be granted a tract of land in the vicinity. The proposed company thus would be a combined canal and land-settlement organization. In view of the later history of the Georgian Bay Ship Canal it is interesting to note this pioneer proposal for that great internal waterway.

In the years 1832-33 some three thousand discharged soldiers who had been allowed to commute their pensions for a sum in ready cash were sent to Canada as settlers. The purpose of pension-commutation was to enable them to purchase land. This scheme also had first been practised in the Australian Colonies; it had been suggested by Secretary-at-War Wynne and hastily adopted without due communication with the Colonial Office.<sup>2</sup> On arrival at Toronto the new settlers were sent to the best available districts for both settlement and employment. But the peculiar temperament of the army pensioner precluded the success of any such plan. Colborne used every exertion to induce them to go on the land, but only some four or five hundred did so. Many of these at once squandered their commutation allowance and were unable any longer to remain there, being "either too indolent or unable to labour with energy sufficient to provide for their families."<sup>3</sup> The maimed and infirm among them soon left and returned to Toronto, where they were frequently seen begging in the streets with their children and inhabiting hovels in the most unhealthy part of the town. Their families suffered severely from diseases which prevailed in summer and from the severity of winter.<sup>4</sup> A more unfortunate scheme scarcely could have been conceived.

Since it would be discreditable to the Government to allow them so to remain, Colborne sent certain families to Penetanguishene, on Lake Huron, there to be kept in charge by the officer of the post until further instructions should come from the Home Government. They were placed in log houses and given a food allowance. The cost of this establishment, as also the relief given elsewhere, was charged to the half-yearly accounts of the emigration expenditure. The total expense incurred in this way during 1837 was over £1,374 cy.<sup>5</sup> But the Penetanguishene settlement itself failed. Very few of the pensioners would exert themselves, and the system of giving them a bare subsistence was bad, for the poorer they became the more regularly were their wants supplied by the Government. Yet they could not be abandoned. In this predicament the Executive Council advised the granting of a definite pecuniary allowance to all commuted

<sup>1</sup>Q 375, II, page 361.

<sup>2</sup>Q 371, I, page 326.

<sup>3</sup>Ibid, page 1.

<sup>4</sup>Q 386, I, page 1.

<sup>5</sup>Report of A. B. Hawke, Emigration Agent, Toronto, Q 403, I, page 52.



pensioners in the province, as being in the end the most economical way of dealing with a nasty situation.<sup>1</sup> Meanwhile, both Legislative Council and Assembly had petitioned the Home Government to restore the old pensions, and Lieutenant Governor Arthur gave advice to the same effect. It so happened that the Home Government came to the same conclusion and anticipated these suggestions by issuing the necessary orders.<sup>2</sup>

The incident was not without result. In August of 1833, a despatch from the Home Secretary announced that it was no longer intended to afford to military pensioners means of emigrating by commuting their pensions. Accordingly the Executive Council ordered that in future no free grants be made to soldiers and sailors, except to such as had been discharged in Canada or had special claims. This regulation was to take effect from January of 1834.<sup>3</sup> Secretary Stanley explained to, Colborne that it was based on the same principle as was the Home Government's objection to giving land to indigent settlers on better terms than to other persons.<sup>4</sup>

In December of 1833 a change was made in the regulations governing remission of purchase money to officers of the army and navy. Quartermasters in future were to be rated the same as subalterns, and warrant officers and midshipmen the same as the corresponding army officers. At the same time instructions were given that non-commissioned officers and privates of the regular army discharged in Canada be recommended for grants as follows:<sup>5</sup>

Quartermaster Sergeants .....	250 acres
Sergeant Majors .....	250 "
Sergeants .....	200 "
Privates .....	100 "

As already ordered, no other military claimant might receive a free grant after January of 1834. Officers entitled to remission of purchase money might receive a free patent at the end of two years upon presenting to the Surveyor-General the location ticket, with a certificate of two years' residence in person or by deputy and two years' personal residence within the province.

Various complaints concerning the status of land tenures and the efficiency of the land offices developed in 1834. In a private letter to the Home Secretary, a plea was made for the establishment of Courts of Equity in Upper Canada, chiefly for the purpose of settling land disputes. The writer claimed the existence of many cases of ejection from lands for committal of some trifling breach of contract after money had been paid and improvements effected; it was even intimated that contracts for sale "were framed with a view to ensure their being broken, in order to eject the purchaser and resell."<sup>6</sup> Early in the year the Surveyor-General himself fell out of favour; upon applying for three weeks' leave of absence for the purpose of arranging his personal affairs, the Lieutenant Governor suggested that "from the complaints of the mode in which the

<sup>1</sup>Minutes of Council, July 4, 1839. State M, page 79.

<sup>2</sup>Q 413, III, page 589.

<sup>3</sup>Minutes of Council, Land Q, page 141.

<sup>4</sup>G 70, page 278.

<sup>5</sup>Minutes of Council. Land Q, page 230.

<sup>6</sup>Token to Stanley, May 5, 1834. Q 384, III, page 780.

business of the department has been conducted during the last year" an inquiry into the state of his office might not come amiss.<sup>1</sup>

About the same time the Home Government found occasion to criticize the Commissioner of Crown Lands. The fault was serious; "Mr. Robinson's accounts would appear . . . to have been rendered in a very defective and irregular manner."<sup>2</sup> It developed that the repeated requests of the auditors for explanations and further vouchers were left without attention until directions were given for stopping the issue of his official salary. This educed the required explanation, which was based on the circumstance of a large sum in timber dues being left unpaid through the failure of a Montreal firm which had charge of its collection.<sup>3</sup> While Robinson apparently had good reason for the delay, yet his neglect at once to explain the situation merited the rebuke which the Home Government saw fit to bestow. Moreover, the incident gave point to the criticisms of men like Gourlay, who observed that the Commissioner, as a member of the Executive Council sat in final audit upon his own accounts. Of course, it was known that the Inspector-General performed the real duties of the audit before the accounts were laid before the Council, but the proverbial avoidance of all appearance of evil would appear to apply with special force in the case of a non-responsible government.

The years 1833 and 1834 had brought many emigrants from Britain to Upper Canada. It was estimated that some twenty-one thousand persons came into the province in the season of 1833 alone; about one-third landed at York, one-third at Hamilton, Niagara and other ports at the head of Lake Ontario, and one-sixth at Cobourg and Port Hope.<sup>4</sup> Of these, only four hundred required assistance. The amount expended on emigrant-settlement work in the years 1831-32-33 totalled £23,548, of which over £925 was spent on roads and bridges. The population at the end of the 1833 emigration season was set by Colborne at 296,544.<sup>5</sup> In March of 1834 Toronto assumed the dignity of a city. It is noteworthy that about this time the Assembly requested that exploring parties be sent from the north shore of Lake Huron into the interior for the purpose of examining the country with a view to future settlement.<sup>6</sup>

In March of 1834 the Assembly addressed the King on the subject of Loyalist grants, objecting strenuously to the placing of any restrictions upon them. Colborne requested an opinion from the Executive Council, and after due deliberation that body declared that it would be better if in future all Loyalist deeds issue as soon as possible.<sup>7</sup> Accordingly, in October of 1835, it was ordered that deeds issue immediately in the names of the original grantees, to all persons who had received location tickets either as Loyalists or militia claimants. It was further ordered that various townships be set apart for the location of these persons, unless they should wish to settle elsewhere.<sup>8</sup>

<sup>1</sup>Minutes of Council, State J, page 184.

<sup>2</sup>Stewart to Hay, Q 384, I, page 54.

<sup>3</sup>Robinson to Rowan, Q 387, I, page 15.

<sup>4</sup>Report by Hawke. Q 381, II, page 433.

<sup>5</sup>To Stanley, October 2. Q 378, III, page 680.

<sup>6</sup>Q 388A, page 56.

<sup>7</sup>Q 381, III, page 556.

<sup>8</sup>Minutes of Council, Land R, page 152.

An incident of some political significance, originating in a land tenure, came up for settlement about this time. In 1821 a man named Forsyth had purchased a piece of land bordering the Niagara River not far from the great falls, and on it had built an inn. In the original survey of the country it was evidently intended by the Government that a piece of land one chain in width should be reserved along the entire length of the bank of the Niagara for a free public road. The description in Forsyth's patent gave the boundary as "a line at one chain distance from the top of the bank."<sup>1</sup> But there were two banks, one along the precipice and one higher up. The first was not practicable as a road, because it terminated at the falls. The other bank ran close to the river above and at the falls, and also farther down stream; only where Forsyth's land was situated did it lie at a distance from the river. Choosing to interpret the description of the reserve as meaning the lower bank, Forsyth built a high board fence across the upper bank, shutting off the view of the falls. Complaints speedily resulted and in due course came to the ears of the Government. In 1827 Maitland, on the entirely reasonable supposition that the description in Forsyth's patent really applied to the upper bank, ordered the fence removed. Forsyth refused to comply, and the Lieutenant Governor made the serious error of using the military instead of the civil arm to effect compliance with his demand; soldiers were sent to destroy the fence. Forsyth rebuilt it, and again Maitland had it removed. Forsyth thereupon contested the case in court. In the meantime he had come to be regarded as a victim of governmental oppression.

The decision settled the land as being a public reserve. Then Forsyth appealed to the Assembly. Censure of Maitland's actions resulted, but little else, and after vainly petitioning the Home Government in 1832, he sold the land. The purchasers also sought settlement in the courts, but without success. Finally, upon further agitation through the Assembly, in 1835 the Home Government ordered that Forsyth be paid damages, because the Assembly had requested it and its members were "the Constitutional Guardians of the public revenue." The tone of the decision is significant of the political trend of the times. Upon the purely technical side of the dispute the Home Government refused to change its former opinion; the land did not belong to Forsyth, but to His Majesty, and the abandonment of that claim would not only impair the provincial defence at an important point, but also "would render the access to the most remarkable natural phenomenon on the face of the globe dependent upon the caprice or the cupidity of individual proprietors."<sup>2</sup>

The passing of an Act in April of 1835, to establish the Erie and Ontario railroad brought out a minor item of land regulation, having reference to trespass upon Crown lands. The proposed route would bring the railway across certain lands reserved by the Government for military purposes, so, by a special clause of the Act, the Company was denied entrance upon any such lands.<sup>3</sup> Following this specific action a general Act was passed in the succeeding year, forbidding entry upon Crown lands by any corporation, without special license from His Majesty's Government.<sup>4</sup>

<sup>1</sup>Q 414, I, page 209.

<sup>2</sup>Glenelg to Colborne, September 25, 1835. Q 388B, page 102.

<sup>3</sup>Q 394, I, page 56.

<sup>4</sup>Statutes of Upper Canada, 1836, page 7.



Some minor changes in the mechanism of the Crown Lands offices took place during 1835. The procedure with respect to a patent was somewhat simplified by an Order in Council dispensing with the Attorney-General's fiat.<sup>1</sup> This improvement might well have been introduced at an earlier date, for the Attorney-General always examined and signed each patent after it was engrossed, rendering the fiat superfluous. At a later meeting this regulation was modified by an order decreeing that in special cases the fiat might issue as formerly, but exempting all ordinary patents.<sup>2</sup> Another change had to do with the office of Auditor-General of Land Patents. The Home Government never had confirmed the appointment of that officer, effected in 1828 by the Lieutenant Governor, and now Colborne received a query as to the feasibility of allowing it to lapse. In a report the Attorney-General pointed out that, while the office was not essential, yet it gave further security to titles in the event of deeds and records in the other offices being destroyed.<sup>3</sup> Colborne, after a delay for which he was severely censured by the Home Secretary, forwarded this report. In his answering despatch Glenelg ordered the abolition of the office, as also the keeping of a better set of records by the Provincial Secretary.

Three proposals of a rather amusing nature concerning land settlement in Upper Canada were made to the Home Government in 1835. The first was presented by an artist named William Brown. He believed that "pictorial representations of familiar scenes in rural life, illustrative of the happy change effected in the condition of the emigrant by his removal," would be a splendid encouragement to emigration. On the ground of his ability as a painter he asked for employment along these lines.<sup>4</sup> The second scheme originated with Charles Lindsay of Lincolnshire, and involved the disposal of all the Crown and clergy reserves by lottery tickets.<sup>5</sup> The third plan, put forward by a Mr. Hewson, was based upon his supposed knowledge of the Irish peasant in Upper Canada. He claimed that upon arrival in the province the Irishman worked harder than most persons and achieved independence more rapidly than they. Finding himself so soon a landed proprietor he became idle and dissolute, a sad state of affairs which could easily be remedied by the institution of a tenantry to replace the objectionable freehold. The circumstances of "a moderate rent" would be a constant "stimulant" to industry.<sup>6</sup>

In a despatch from the Home Secretary there now came the announcement that "the general subject of the system by which the estate of the Crown in the North American provinces may most fitly be managed is under the consideration of His Majesty's Government." In 1836 the subject of colonial lands and emigration was reviewed by a parliamentary committee, in whose findings can be seen the influence of Wakefield. It was recommended that all arrangements for sale of lands be placed in charge of a central Land Board in London, which would be directly responsible to His Majesty's Government. Acting through local boards in

<sup>1</sup>Minutes of Council, November 10. Land R, page 198.

<sup>2</sup>Minutes of Council, Land R, page 256.

<sup>3</sup>Q 385, III, page 532.

<sup>4</sup>Q 394, I, page 148.

<sup>5</sup>Q 388, II, page 429.

<sup>6</sup>Q 388, II, page 322.

<sup>7</sup>G 74, page 326.



the colonies, it would superintend the surveying department and would so direct emigration as to proportion the supply of labour to the demand. Each colony would be supplied with labour in exact proportion to its land sales. On this recommendation Lord John Russell appointed a Land and Emigration Commission, with full instructions along the lines indicated.

At this time British statesmen looked on colonial lands as a heritage held in trust for the common use of the Empire, and this scheme of administration from London was based wholly on that point of view. But the difficulties of application in the case of Canada were insurmountable. Besides the presence of a spontaneous emigration, already mentioned, there was the hopelessness of trying to apply any new system in view of the reckless profusion of the past. So this measure, like its forerunner of 1831, found application principally in Australia, New Zealand and Tasmania. Difficulties arose in those countries also; in Australia the problem of "squatters," involving the right of using natural pasturage; in New Zealand, the bitter controversy with the New Zealand Company. Meanwhile Canada continued to wrestle with her own peculiar problems.

Early in 1836 Lieutenant Governor Colborne's term of office came to an end. His administration in Crown land matters had achieved no small measure of success, but the same cannot be said of his political activities. His view of the inter-relationship of the two fields is interesting; "Fill up the vacant space in this province," he wrote, "and occupy the waste lands of the Crown with as much speed as possible, and you will have no more cause for anxiety on account of the clamour in the Canadas."<sup>1</sup> His successor in office, Sir Francis Head, accomplished less good in land settlement and achieved more harm politically. In July he informed Glenelg that practically the only real grievance he could detect in the province was the land-granting department, "which has long been a subject of universal and, I must say, of just complaint."<sup>2</sup> His criticism, however, was aimed principally at the Surveyor-General and Commissioner of Crown Lands in person, both of whom were physically incapacitated for the duties of their offices. Upon a hint from the Lieutenant Governor, Surveyor-General Hurd soon afterwards sent in an application for six months' leave of absence with a view to retirement, and Head selected as his successor Captain Macaulay of the Engineers.

In connection with this appointment a small scandal arose. Another candidate for the position was Radenhurst, Chief Clerk of the Land Office. A demonstration of feeling in his favour and against the appointment of an outsider was made whereupon Captain Macaulay resigned. But in January of this year another clerk named Spragge had brought against Radenhurst charges of carrying on a private agency in land for various persons. At that time the Council had not conceived it "expedient" to listen to charges brought by "a junior clerk," and so the matter ended.<sup>3</sup> But now the charges were remembered and Radenhurst's application was refused recommendation. Head had informed Captain Macaulay that his resignation would not be accepted, and thus encouraged, the latter had sold his commission in the Engineers. Unfortunately, Glenelg now

<sup>1</sup>To Hay, September 21, 1832. Q 374, IV, page 887.

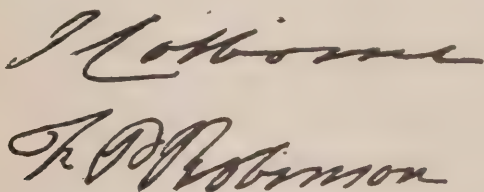
<sup>2</sup>Q 390, page 745.

<sup>3</sup>Minutes of Council, State J, page 369.

commanded the Lieutenant Governor to appoint some person other than Captain Macaulay, very much to the surprise and discomfiture of that gentleman. At the same time he curtly expressed his desire that in future any officers guilty of the practices charged against Radehurst be dismissed summarily.<sup>1</sup> Head later appointed to the vacant office a gentleman of the province, quite unrelated to the Captain, by the name of John Macaulay.<sup>2</sup>

About the time he appointed R. B. Sullivan, Mayor of Toronto, to the post of Commissioner of Crown Lands in place of the Honourable Peter Robinson, that gentleman having suffered a paralytic seizure. With this office, as formerly, was joined that of Surveyor-General of Woods and Forests. In reply to the Lieutenant Governor's despatch presenting the appointment for his approval, Glenelg adverted to his past expectation of being able earlier to adopt "some general arrangement applicable to all the North American Colonies" by which the delay and expense attending the passing of patents to land might be reduced, and at the same time the general efficiency of the department promoted. But such an arrangement not yet being completed, he had abstained from definitely introducing any changes into the existing system. For the same reason it would not be possible absolutely to confirm Sullivan's appointment; he would have to consider it as provisional only.<sup>3</sup>

Head was not long in advancing a solution for the land problems of Upper Canada. In August of 1836 he informed Glenelg that he wished to demonstrate "by facts rather than arguments" that a triumph of "constitutional" over "republican" principles would be for the good of the country, and for this reason he desired an extension of his power and a release from as many restrictions as possible, "particularly as regards the Land Granting Department."<sup>4</sup> He defined this "power" in terms of alteration in the land-granting system, more especially with a view to preventing speculators from holding up the price of land. The request was typical of his conceit and lack of deliberation. It evoked from Glenelg a precise statement of the attitude of the Home Government towards the land granting system of Upper Canada. After reminding him that the Government had given certain pledges with respect to that system, including a promise to concur with the local Legislature in enacting all necessary laws governing the disposal of the proceeds from sales, the minister concluded thus: "but the principle, that the land-granting system is to be made the subject of local legislation, is beyond debate."<sup>5</sup>

The image shows two handwritten signatures in black ink. The top signature is 'J. Colborne' in a cursive script. The bottom signature is 'F. P. Robinson' in a similar cursive script.

Facsimile of the signatures of Sir John Colborne and F. P. Robinson.

<sup>1</sup>July 25, 1836. Q 390, I, page 34.

<sup>2</sup>Q 391, page 64.

<sup>3</sup>January 28, 1837. Q 390, page 692.

<sup>4</sup>Q 381, page 5.

<sup>5</sup>October 4, 1836. Q 391, page 9.

## CHAPTER VII.

### CASH SALES AND PROVINCIAL CONTROL

Early in the year 1837 a circular despatch from the Secretary for the Colonies was laid before the Executive Council of Upper Canada.<sup>1</sup> It drew attention to certain serious defects in the regulations governing the purchase of land by instalments. The collection of these instalments was expensive, and the recovery of interest on the unpaid portion was virtually impossible. Although forfeiture was entailed for neglect of the established conditions of sale, "the nature of the case necessarily precluded a resort to so extreme a remedy." Hence the tendency of the system was to lead settlers to buy more land than they required, and consequently to disperse them over a wider extent of country than they could beneficially occupy. The effect on timber land was still more injurious; persons bought land by paying the first instalment, then stripped it of timber and later abandoned it, leaving merely wild land as a result of their occupation.

The despatch proposed as the most direct remedy for these evils a system of ready-money payments. Head was instructed to issue in Upper Canada a notice to the effect that from and after June 1, of that year, all purchasers of Crown lands would be required to lay down at the time of sale ten per cent. on the whole value of the purchase, and the balance within fourteen days from that date. Until the whole price was paid, the purchaser would not be put in possession of the land, and in the event of payment not being made within the prescribed period the sale would be considered void and the deposit forfeited. Similar rules would apply throughout all the North American Colonies. The operation of this new regulation had been deferred until June in order that settlers who already had proceeded to North America on the faith of the existing regulations might be able to obtain lands on the terms they had been led to anticipate. But in order meanwhile to repress purchases by speculators not intending to settle, it was further ordered that the Lieutenant Governor give notice of the Government's intention strictly to enforce the conditions annexed to the sale of lands under the existing regulations.

In the determined agitation for control of the purse, which at this time characterized the political activity of the province, the Crown lands played an important part, for from them was derived a considerable portion of the provincial income. The Assembly argued that by *reserving* the Crown and clergy sevenths the British Government tacitly gave up control of all other lands. In this connection the Provincial Executive opposed all demands of the Assembly, but the Home Government was wiser, and in May of 1838 the Royal assent was given to an Act, passed in the Assembly in 1837, by which control of the public lands of Upper Canada virtually passed into the hands of the people's representatives. This Act, entitled "An Act to Provide for the Disposal of the Public

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<sup>1</sup>G 33 (Lower Canada), page 348. February 24.



Lands,"<sup>1</sup> largely repealed the existing land regulations, but with some changes worth noting.

Free grants in future were to be limited strictly to U.E. Loyalists, their children, or such other persons as the existing instructions from Britain named. But a grant of this nature might be transferable, and the assignee might obtain a patent. Necessary precautions respecting the endorsement and registration of free claims were enjoined. If the situation of the particular land bestowed were accounted undesirable, a cash allowance might be granted in lieu thereof, at the rate of four shillings per acre, in the purchase of any other public lands sold at auction. The rights of military officers and other persons entitled to a remission of purchase money were to be recognized. In all cases save those specified, lands were to be offered for sale at public auction only. But if lands so offered were not sold, the Lieutenant Governor in Council might direct their sale privately at the upset price already announced at auction. Terms of public sale, with the upset price, were to be fixed by the Lieutenant Governor, while management of sale, with setting of place and time, was to be controlled by the Commissioner of Crown Lands. The latter would receive the proceeds, in due course paying them over to the Receiver-General.

To encourage actual settlement on lands so purchased, the Lieutenant Governor in Council might order reservations made of lands adjoining those to be sold, which would be granted free to purchasers of original lots after five years' residence thereon with improvements. These adjoining lots were not to exceed fifty acres in area, and residence must take place within ten years of the original purchase. Resident agents of the Commissioner of Crown Lands were to superintend sales in each district, receiving for that service a percentage on the purchase monies. To them all monies were to be paid, and by them were to be transmitted to the Commissioner, under a penalty of a fine of fifteen per cent. of the sum retained. The Commissioner in turn was to remit quarterly the sums in his hands. Purchasers might obtain immediate possession, and patents were to be issued to them promptly upon payment of the purchase money in full. The Lieutenant Governor in Council might direct the spending of £1,000 in any township for grist or saw mills, to be paid through the Commissioner. These mills later were to be sold and the proceeds transmitted to the Commissioner. He would be required to furnish an annual statement of all such sales or other transactions, with accounts of the contingent expenses. Adequate advertisement of all sales was stipulated. Finally, the Lieutenant Governor in Council was empowered to direct the Commissioner from time to time to make private sales, at a fair price, to any lessee or occupant of any Crown lands who from the peculiar situation of the property in question might be liable to injury by its disposal to other persons.

The Act was to continue in force for two years only. Eventually, in 1839, it was extended for another five years. In sanctioning it, Glenelg pointed out two clauses which he considered defective.<sup>2</sup> The first was that which authorized the Lieutenant Governor to direct reservations of lands adjacent to lands about to be sold. The second was that which enabled

<sup>1</sup>Revised Statutes of Upper Canada, vol. I, pp. 860-66.

<sup>2</sup>G (Upper Canada), page 256. Also Minutes of Council, State K, page 210.



him to make private sale to any person liable to injury by the public sale. Both were open to the same general abuse; they would invest the Executive Government with the power of dealing with this part of the public property in such a manner as to gratify individual persons, and convert into a source of favour an administration which should be conducted "upon the most rigid principles of open and impartial dealing." A wish was expressed that when the bill again came under consideration for revival the Council would endeavour to induce the Assembly to omit these clauses. In conclusion the Minister observed that the Royal Assent was given "because the main scope and tenor of the law is in accordance with those principles on the subject of the settlement of the waste lands, which have been maintained by His Majesty's Government since the year 1831." The Council was requested, pending a change in the bill, to abstain from exercising their rights in the ways considered thus objectionable.

In 1836 charges were brought against Head of using land-patents illegally to influence the Assembly elections, throughout which he had shown himself strongly opposed to the Reform party. The charges, made by a gentleman named Duncombe, were to the effect that the Lieutenant Governor had issued patents to certain "Tory followers" before they had completed the conditions of settlement, while other persons who really had complied with the requirements in full were unable to procure deeds until after the election, and hence were prevented from casting votes. It was claimed that other patents were given for very small quantities of land, "thus creating a great number of voters who went from one election to another and voted at each. . . ." <sup>1</sup> that patents were given to commuted pensioners who were merely under license of occupation: that patents were issued for parts of lots without description of the parts, in cases where not all the purchase money had been paid. In all such cases the favoured persons were said to have been "Tories." The Assembly drew up an address on the matter of these charges; Head referred it to the Executive Council, and that body strongly denied the existence of any such malpractice in connection with the land transactions of that particular period. <sup>2</sup> It was stated that an alteration in the form of patent, by which the statement of boundaries was omitted, had been adopted on the recommendation of the law officers of the Crown before the prorogation of Parliament and before the coming into office of the existing Council, but without any reference to elections. Unfortunately the belief in Head's guilt was strengthened by his foolish partisanship; there is, however, no evidence in the official records to warrant the truth of these particular charges.

A slackening in the stream of immigration and a partial failure of the crops in most parts of the province in 1836, added to the existing financial difficulties, prevented the continuance of many public works which had been begun on the strength of the expected increase in population. As a result it became extremely difficult for new settlers to obtain work, and the Council recommended that £500 be assigned towards opening a road into five new townships in the rear of Kingston, where emigrants might obtain lots on special terms. These lots, of fifty acres each, were to be free grants for one year, within which time the settlers might purchase

<sup>1</sup>The Minutes of Evidence, Reports of Committee, etc., may be found in Q 399.

<sup>2</sup>Minutes of Council, January 5, 1837. State J, page 506.

them from the Commissioner of Crown Lands at five shillings per acre. An emigration agent would be put in charge, from whom monthly reports of settlement would be required.<sup>1</sup> Only circumstances of an unusual sort could thus bring about a lapse in the strict policy of cash sales.

A most useful and timely Act of Parliament was passed in March of 1836 establishing Boards of Boundary Line Commissioners in the various districts. The necessity for such an Act lay in the numerous and extensive errors inherent in the early surveys, constantly resulting in the most serious and complicated disputes between landowners. Sufficient cause for the carrying out of this good work was given in June by Instructions to Lieutenant Governor Arthur temporarily forbidding any further alienation of land. This action was correlative to the formation of Lord Durham's commission of enquiry into the workings of the Provincial Governments, including their land systems, and had as its object the prevention of "sudden and mischievous alienation of public property" by speculators.<sup>2</sup> Arthur accordingly ordered the Commissioner of Crown Lands to postpone all notices of sales until further instructions.

In June of 1838 R. B. Sullivan was appointed Surveyor-General in addition to his office of Commissioner of Crown Lands. Arthur's object in taking this step was a concentration of departments, partly in answer to parliamentary criticism of overlapping of offices.<sup>3</sup> No increase in salary or fees resulted to Sullivan, and it was further proposed to reduce the number of clerks in this consolidated land-office. The arrangement was admitted to be purely experimental. Meanwhile a number of minor changes were effected. A bill was passed providing for the further protection of Crown lands from trespass and injury.<sup>4</sup> It called for the appointment of commissioners to inquire into matters of this sort, and provided fine and imprisonment penalties for convicted offenders. In October of 1840 the Council made it known that the stage had been reached at which defaulters in payment of instalments under the previous regulations should be prosecuted, and that such action would be taken in future, commencing with those persons who had paid only one instalment and still owed the rest.<sup>5</sup>

Suggestions for new land systems and new methods of increasing the land revenue continued to crop up. In 1839 mountain rice from the Toomla range in Uipal, India, was sent to Halifax and thence to Toronto, to be grown in Upper Canada, the climate being considered "analogous to that of the Toomla Range." It was to be distributed among the farmers of the province.<sup>6</sup> In March of 1839 a gentleman named Fergusson came forward with a new scheme for colonization by military settlements. Approved persons were to be given the task of recruiting in Britain a number of regiments for "limited service" in British North America, and settling them in that country "in regimental blocks." The service would be for periods of three, five and seven years, and would offer less pay than that of regular troops of the line. Absolute settlement would be a prime condition for grants, and to insure the desired permanency

<sup>1</sup>Minutes of Council, Land S, page 648.

<sup>2</sup>Durham to Arthur, June 30. Q 407, II, page 375.

<sup>3</sup>Minutes of Council, State K, page 403.

<sup>4</sup>Revised Statutes of Upper Canada, 1839, page 43.

<sup>5</sup>Minutes of Council, Land U, page 468.

<sup>6</sup>Q 413, II, page 347.

one-third of all pay would be deducted, by the Government and returned with interest upon completion of settlement.<sup>1</sup> The discussion of such schemes at least indicated a continuance of British interest in emigration policies.

Notwithstanding Lord Durham's injunction against further alienation of Crown lands, there was no lack of opportunity for purchase by private sale. Consequent upon the political troubles of 1837 the estates of Mackenzie's "traitors" were thrown upon the market, on the ground that their trials had put the Government to a considerable expense.<sup>2</sup> Financial distress in both the United States and Canada also affected sales, while the same circumstances forced the sale of many purely speculative holdings. Immigration had revived to a moderate extent; some six thousand new settlers had entered the province by July in the 1840 season. These persons required little Government aid, as most of them had come out at the solicitations of friends and relatives already in Upper Canada, and a considerable scarcity of labour prevailed. In the same year work was begun on macadamized roads in various districts, a circumstance of good omen for future settlement.<sup>3</sup>

The discontents which had culminated in Mackenzie's rebellion and in part had occasioned Lord Durham's mission had found in the delinquencies of the Crown Lands Department much food for growth. The purely political grievances of the day were matters of concern principally to the few men of keener insight who, like Robert Baldwin, perceived in responsible government the one cure for current disorders. To the greater number of the Reform party, and especially to its radical wing under Mackenzie, the more immediate matters of faulty or corrupt administration took precedence. Upon the administration of the Crown lands, the principal source of provincial wealth, was directed the brunt of the attack. The system of sales, designed to remedy the evils of free grants, in its turn had been found wanting. Speculators continued to obtain possession of large areas. All sales were by auction, and the quantity sold was limited by order of the Lieutenant Governor; the result to the purchaser was a restricted freedom of choice. Obviously the settler himself would be the better judge of location and quality. True, a purchaser could request that a certain lot be put up for sale, but in that case he would have to wait until it was advertised in the usual way, and then at the sale might be overbid by another person whose interest had been awakened by the special advertisement. The practice of payment by instalments, so unreservedly condemned by the Home Government in 1837, had induced many settlers without the necessary ability or capital to buy lands they could not retain. The Wild Lands Tax had resulted in a slight improvement, but the amount levied was too insignificant to stimulate cultivation.

The country as a whole was not progressive, in spite of a large and wealthy immigration. To pay for the construction of canals and other public works large loans had been made, aggregating a million pounds, while the revenue was barely sixty thousand pounds a year. It had been expected that Upper Canada would realize a more adequate income from her great resources in land, and failure accentuated the demand for drastic remedies. Hence it was with keen interest that news of Lord Durham's

<sup>1</sup>Q 414, II, page 261.

<sup>2</sup>Minutes of Council, State M, page 85.

<sup>3</sup>Ibid, page 397.



mission to Canada was received in the upper province. Durham and his assistants were well aware of the significance of the land problem. In the original blue-book containing Durham's Report, no less than twenty-one pages out of a total of one hundred and nineteen were devoted to that subject. A general system for all the provinces was contemplated, a system in which emigration and improvement of communications were included as component parts.

A special commission was named to investigate land matters in Upper Canada; it was nominally headed by Charles Buller, but was directed by Gibbon Wakefield. In Section Four of the Durham Report, under the heading "Disposal of Public Lands.—Emigration" appeared, as a part of the larger findings, the results of this special commission. Much of the whole section is applicable to Upper Canada in common with the other provinces. It began by pointing out the necessity to new countries of a good system of land granting. "The disposal of public lands in a new country," it ran, "has more influence on the prosperity of the people than any other branch of government."<sup>1</sup> The principal requirements for such a system were definiteness, uniformity, and fairness. In practice, a true system would provide a constant and regular supply of new land to meet the need of an increasing population.

Over against the failure to provide such a system in Canada, Durham placed the success attendant on the workings of the system existing in the United States; in this connection he estimated the number of people who had emigrated from Upper Canada to that country since 1829 as being equal to more than half the number entering the province in the same period. In only one respect could any uniformity of method be claimed for the North American Colonies—in the profusion and waste which had everywhere prevailed. At the time of the Report, sixteen-seventeenths of all the land in Upper Canada had been alienated from the Crown, but only about one-tenth actually was occupied.<sup>2</sup> The enormous disproportion between the granted and the cultivated land was obvious to the most casual observer; increase in population appeared to have led merely to an extension of the limits of settlement rather than to the occupation of unsettled land in the midst of old holdings. There were other faults almost as serious; surveys had been inaccurate, needless delays had beset the applicant for grant or patent, and there had been favouritism as well. The truth of these charges could not be doubted, for the witnesses upon whose testimony they were based had been drawn from all parties, ranks and districts.

The Report proceeded to sketch the history of the existing system, criticism being applied under various heads. Referring to the Home Government, it was pointed out that the policy adopted towards Upper Canada too often had had reference to the state of parties in England, rather than the wants and circumstances of the province. The practice of granting land as a reward for service was scored; "the Province of Upper Canada appears to have been considered by the Government as a land fund to reward meritorious servants."<sup>3</sup> Durham showed that nearly half the surveyed lands in the province had passed for rewards, and of this

<sup>1</sup>Lucas, "Durham's Report," vol. II, page 242.

<sup>2</sup>Lucas, "Durham's Report," Appendix B, page 35.

<sup>3</sup>Ibid, vol. I, page 174.



quantity less than one-tenth actually had come under cultivation. Moreover, much land had been locked up in Crown and clergy reserves.

The improvidence of the local Government was dealt with in turn. Perhaps the most striking example was the fact that from 1763 to 1825, when the population grew slowly to 150,000, the quantity of land granted or engaged to be granted was over 13,000,000 acres. During the next thirteen years the population increased to 400,000, but the quantity of land granted and sold, including clergy reserves, was less than 600,000 acres. There were criticisms of another sort. After the war of 1812 the development of the province had been retarded by restrictions on United States immigration. Slowness in settling the militia claims was named as another factor of discontent. Under the sales system instalments might run for a period of from four to ten years; meanwhile the purchaser had no right to vote. These and other faults of policy, already discussed, were taken up in the Report at length. Especially severe was the arraignment of the Surveyor-General's Department. After enumerating a long list of irregular and faulty land transactions the Report commented thus: "With an establishment inadequate at best, and for the last nine years under no efficient and responsible direction, it is almost a matter of course that these and similar irregularities should prevail."<sup>1</sup>

At the time of the Report the amount of unsurveyed lands totalled approximately 17,653,544 acres. The clergy reserves amounted to 2,395,687 acres. The area granted and appropriated was 13,660,838 acres. About 1,147,000 acres remained to be granted. A curious error in the assigning of the reserves was pointed out. Every seventh lot had been reserved, under the impression that by such means the specified one-seventh would be obtained. In reality this made the reserves about one-sixth of the whole. The actual excess at the time of the Report was about 300,000 acres.

Durham suggested, as a means of bringing order into the land situation, that its administration be handed over to an Imperial authority. The actual system proposed originated with Wakefield. No land should be acquired save by purchase. A fair price should be set, and the money acquired through sale was to be used for development of communication. At first only the lands about the seat of Government, and, later on, those a little farther away, should be sold, thus ensuring solidarity. The emigration of labourers should be encouraged; they could hire themselves out to settlers with capital until able to purchase land. In every way possible the new community should resemble closely the mother country, even to the perpetuating of class distinctions.

The Report was fiercely criticized by the Governmental party in Upper Canada. The views of John Beverley Robinson may be taken as typical of their attitude. In a letter to the Marquis of Normanby<sup>2</sup> he asserted that Durham's deductions were wholly wrong and totally unsupported by evidence. It is to be noted, however, that he failed to support by proper evidence his own statements in this connection. The proposal to confide to an Imperial authority the management of the public lands he claimed was unnecessary, because such already had been the practice

<sup>1</sup>Lucas, "Durham's Report," vol. III, page 60.

<sup>2</sup>Q 425, I, page 42. February 23, 1839.

in Upper Canada when the Executive Council held control. The usefulness of direct control from Britain as a preventive of local corruption he did not discuss. Durham's proposal of government by consent he declared utterly foolish, considering it merely a prelude to separation from the mother country. The measure of Robinson's statesmanship is shown by this absolute failure to interpret conditions within his own province, or to understand the measures which could bring relief. By the Reform party, and especially by the moderates on both sides, the report was hailed with pleasure and satisfaction. In Britain its value was not at first appreciated, though in course of time there came fullest recognition. But some immediate results were achieved. "If the Durham Report did nothing else, it taught the people of England how nearly they had lost a glorious inheritance from mere failure to see in it anything more than a refuge for half-pay officers or troublesome paupers."<sup>1</sup>

The report so far justified the critics of the Land Department as to cause great uneasiness in official circles in Upper Canada. But worse was to come. In May of 1839 the Assembly presented an address to the Lieutenant Governor requesting that a commission be appointed for the purpose of investigating and reporting on the state of each department of the civil government, and recommending any beneficial changes therein. The request was granted. A commission of twenty members was appointed, drawn from the Executive and Legislative Councils, the provincial judiciary and the military and educational professions. The findings of this commission, commonly known as the Report of 1840,<sup>2</sup> constitute an important addition to the documentary material for any study of the administration. The commission was divided into committees, to each of which was assigned the investigation of a particular office or department. To Committee No. II was assigned the offices of the Receiver-General, Commissioner of Crown Lands, Surveyor-General of Lands, Surveyor-General of Woods and Forests and Chief Agent for Emigration.

The findings of the committee with reference to the office of the Receiver-General need not here be reviewed in detail; mention should be made, however, of the proportion of the provincial revenue derived at this time from the Crown lands. Over £44,000, or about four-fifths of the entire revenue, came from the customs duties as shared with the lower province. But next in order came the land revenue; approximately £865 for fees, £850 for clergy reserve rentals, £815 interest on sales of clergy reserves, and £6,660 from sales of Crown timber. Sales money from clergy reserves was paid direct to the Imperial treasury, and all sales of Crown lands had ceased under Lord Durham's instructions; hence the two largest sources of land revenue could not be included. The committee's chief criticism was aimed at the irresponsible mode of crediting the funds; "the present system under which the whole of the public monies are permitted to stand at the credit of the Receiver-General as a private individual, without having in his office any book or account which would show where the balance due to the public or any part thereof, was deposited, requires prompt amendment." The committee further commented on the overlapping of official routines. Payments of clergy reserve

<sup>1</sup>F. Bradshaw, "Self Government in Canada," chapter XVII.

<sup>2</sup>Appendix to Journals of Assembly for 1840, or in separate volume.

rents, instalments on sales, timber dues, and similar monies were paid through the Commissioner of Crown Lands, whereas it would greatly simplify matters to have these paid directly to the Receiver-General. On the other hand, when land fees were paid to the Receiver-General, determination of their kind and amount was made in his office, a matter properly belonging to the office of the Surveyor-General. It was pointed out that much time might be saved were the proper fee to be noted upon the description while in course of preparation.

The general nature of the evidence submitted concerning the office of the Surveyor-General may be gathered from the circumstance of the committee's refusal to submit any opinion upon it, because of the very serious consequences to individual officers which might be involved. Mention already has been made of certain charges brought against Radenhurst, Chief Clerk of the office, by a junior clerk named Spragge. It was stated that Radenhurst interfered with the making out of locations in order to bestow on favourite persons lands directed by Order in Council to be disposed of at public sale. "Nothing is more imperatively called for," observed the committee, "than a continual and rigid supervision upon the transactions of the department, to prevent a continuance of practices discreditable to the department and prejudicial to the interests of all but a few."

Because of these personal charges, as also certain evidence of loose business methods in vogue, the committee strongly recommended that the offices of Surveyor-General and Commissioner of Crown Lands cease to be held by one person. The duties to be performed in each office were deemed sufficient to engage the individual attention of one efficient administrative head. It was pointed out that the business of the two departments had remained as distinct as when under separate heads. The Honourable Peter Robinson had not managed the one office of Crown Lands as efficiently as could be desired, and it had been anything but good policy to incorporate with it the office of Surveyor-General. The committee expressed their opinion on this point in no uncertain tone; "The manner in which the business is at present managed is the most irresponsible that can be conceived." The findings of the committee further went to prove "a system of partiality, favouritism, and corruption; begun at an early day and continued with but few interruptions up to the present time."

The entire accuracy of such sweeping charges may be questioned, but the evidence concerning the efficiency of the business methods employed were sufficiently damning. It was found that the official correspondence was not confined to any one person, but was taken part in by all. A tremendous volume of routine business was in arrears; original field notes remained unentered, some of them even had been lost, and no attention had been given that branch of the work since 1832; many location returns for military settlers also were unentered; the same applied to the King's College lands. Because of the imperfect arrangement of books and documents, time was unnecessarily lost in obtaining information connected with individual claims. Often the statements of persons making application had been accepted as correct in order to save time, when a careful examination would have yielded a very different result. Other evidence



of a similar nature corroborated the general charge of non-supervision and poor management brought against the heads of the office.

Other suggestions and criticisms included in this report are of interest. The committee were of opinion that no land should be located save on rigid condition of actual settlement; that land for privileged persons should be segregated, save in case of actual settlement; that inferior lands should be offered at a proper price to attract the poorer classes of settlers. The general policy of the Provincial Government respecting lands was criticised; "The settlement of the Crown lands was too generally conceived as a mere matter of pounds, shillings and pence, and the amount paid into the public chest is accounted the only incident deserving of notice." In places the language of censure was severe. "The system upon which our lands have been granted was the greatest prostitution of the Sovereign's bounty ever practised in any country. The interests of the Sovereign . . . were wise and guarded, but the system pursued was corrupt; actual settlement was required . . . but the influence of interest obtained for individuals whose claims could not exceed 200 acres large grants to themselves and families; dead parents as well as infants who never lived to walk out of their cradles had Orders in Council passed in their names, and their families eventually obtained the lands."

Included in the evidence taken by the committee was a summary of the many changes which had occurred in methods of survey. In surveying a township, the outlines were first run out. Then the surveyor commenced laying off the concessions from the front of the township, posting the lots as he proceeded. Two concessions or ranges were made to front upon each allowance for road, thus rendering available a double amount of labour for road maintenance. This was known as the "double front" system. By later modes of survey "check lines" were run at the side roads between every sixth and seventh lot; as a result, every block embraced within these several road allowances formed an independent survey, confining errors to the block within which they might exist. The early surveyors did not use check lines, and errors became cumulative. Surveyors were supposed always to leave clear evidence of the direction in which the first line had been run, but often there was difficulty later on in determining just what had been done; by some surveyors a single blazed line was used to mark the centre of a road allowance, by others the same sort of line was used to mark the left or right hand boundary. Often the early field notes were inadequate.

By the earliest system the standard size of lot was 200 acres; in 1817 the ranges were laid in 100-acre or half-lots with thirty chains frontage. But this gave more frontage than settlers could well clear and maintain. By a new system, existing at the time of the report, each half-lot was given only fifteen chains frontage, with a correspondingly greater depth. By this same system, introduced in 1832, there was a side road at every third lot, and the alternate lines, which still exist in many parts of Ontario to-day, were called "blind lines." It was about this time that the system of check lines was introduced. In 1825 the average expense of surveying a township was given as £348.<sup>1</sup>

<sup>1</sup>Strachan's memorandum to Colborne. Q 338, II, page 493.



Attached to the office of Commissioner of Crown Lands as originally created was the office of Surveyor-General of Woods and Forests. The Committee's findings with respect to its administration were in a line with its criticism of the Commissioner's business methods generally. Practically no supervision had been exercised; the sheriffs had dealt with the business in their own way, and while no charges of corrupt practice were brought, the fact remained that the instructions sent out by the Treasury Lords for the guidance of the office had been wholly neglected.

The office of Chief Agent for Emigration was declared by the committee to be well conducted in every way, and it escaped the adverse criticism bestowed upon the others. Committee No. III, which dealt with the office of the Executive Council, presented a comprehensive report. The number of petitions for land received by the Council in the immediately preceding years had averaged over 1,500 per year, with about 300 on state matters. The committee pointed out that a large number of the petitions and other applications with respect to lands came within the scope of well-defined rules, and formed matters merely of ordinary routine. Such petitions could as easily be dealt with by the Surveyor-General or Commissioner of Crown Lands, thus relieving the Council of no inconsiderable amount of business. The committee further suggested as an aid to the speedy despatch of public business the appointment of a President of Council. Included in the evidence concerning the office of the Surveyor-General were a number of statements as to the total number of land warrants issued to date, which possess some interest in so far as they indicate the progress of settlement. The following table shows the distribution:

To early settlers and military claimants under the old Regulations .....	2,654,950	acres
To United Empire Loyalists or their children .....	2,046,000	"
To militia claimants .....	655,500	"
To reduced officers, discharged soldiers and seamen .....	702,700	"
To emigrant settlers, regulations of July, 1804 .....	642,100	"
To emigrant settlers, regulations of January, 1819 .....	112,800	"
To emigrant settlers, regulations of January, 1820 .....	71,900	"
To sons of Scotch emigrants, state-aided .....	13,700	"
By fiats on land board locations .....	68,100	"
By fiats on grants paying fees .....	978,400	"
By fiats on grants to military settlers .....	221,000	"
Gratuitous grants of fifty acres each .....	15,900	"
By warrants under regulations of November, 1826 .....	34,800	"
To army and navy officers obtaining grants from government, later changed to remission of purchase money..	126,924	"
To settlers under Hon. Peter Robinson .....	40,100	"
Total of .....	8,389,874	"

Of this amount, 1,258,320 acres were granted between the years 1824 and 1833, inclusive, in the proportion of 433,400 acres to United Empire Loyalists, 142,100 to military claimants, 241,900 acres to discharged soldiers and pensioners, 64,300 to officers and 376,620 to other persons all on condition of actual settlement.

The total area of surveyed lands in the province was computed at 16,309,302 acres. An official report in 1841 gave the amount of clergy

reserves as 2,169,926 acres, the vacant land as 1,214,661 acres, the granted or appropriated land as 13,338,942 acres. The Crown lands for sale in 1839 amounted to 525,773 acres, with 23,107 acres sold since that year. Indian lands totalled 1,339,628 acres, including islands.<sup>1</sup> The progress of sales is illustrated by the following table from another report:<sup>2</sup>

In 1829 .....	3,883	acres, average price of	15s. 1¾d.
In 1830 .....	6,135¾	" " " "	13s. 8½d.
In 1831 .....	4,357	" " " "	11s. 3½d.
In 1832 .....	10,323	" " " "	9s. 1½d.
In 1833 .....	26,376	" " " "	8s. 9¼d.

In 1835 some 22,700 acres were sold at an average price of 6s. 9d. per acre.<sup>3</sup>

Another report gives slightly different quantities:

In 1829 .....	3,883	acres
In 1830 .....	6,147¾	"
In 1831 .....	4,365	"
In 1832 .....	10,352	"
In 1833 .....	26,417½	"
In 1834 .....	8,891	"
In 1835 .....	22,707	"
In 1836 .....	7,923¾	"
In 1837 .....	7,003¾	"

This made a total of 97,690 acres, at prices averaging from 17s. 8½d. to 11s. 3½d. per acre.<sup>4</sup> These reports often conflict in details and most of them can be used only for rough estimates, a circumstance not to be wondered at in view of the condition of the land offices as portrayed in the Report of 1840.

The statistics for emigration are similarly unsatisfactory. The first census of those arriving at Quebec was taken in 1831. Up to 1839 some 263,000 emigrants arrived in Canada. The largest total for any one year was that of 1832, amounting to 51,746; the smallest, in 1838, was 4,992. For the first ten years after the Napoleonic wars the average annual emigration from Britain to Canada was about 9,000 persons.<sup>5</sup> Between 1826 and 1830 the average was 20,000. After 1834 the majority of British emigrants went to the United States rather than Canada. It is difficult to determine what percentage of the emigrants landing in the lower province went to Upper Canada or passed on into the United States. The population of Upper Canada in 1841 was estimated at 428,931.<sup>6</sup>

From two official sources might be expected a body of comment on the Report of 1840—the Executive Council and the Lieutenant Governor. In August the Executive Council presented a formal report on the findings of the Committee of Investigation into the office of Surveyor-General and Commissioner of Crown Lands, in which the whole matter was treated with the seriousness it deserved. "From a careful examination of all these documents, the Council are compelled to arrive at the conclusion that

<sup>1</sup>Q 431A, page 325.

<sup>2</sup>Printed return, British Commons, 1835. Q 383, II, page 273.

<sup>3</sup>Q 389, I, page 35.

<sup>4</sup>Q 427, I, page 147.

<sup>5</sup>Lucas, Durham's Report, vol. I, page 188.

<sup>6</sup>Q 431A, page 28.

there has been inattention, irregularity, and a departure from established rules in the conduct of business in this office."<sup>1</sup> They emphasized the fact that during the period to which their attention chiefly had been drawn, the department had been without the supervision of its head. But no blame was cast upon that officer personally. It was pointed out that because of the pressure of public business Sullivan's duties as Presiding Councillor of the Council had filled all his time. So far as Radenhurst was concerned, they were of opinion that his removal from the Surveyor-General's office was "indispensable." They concurred in the advice of the Committee as to future improvements, but considered of primary importance the regular attendance and supervision of the head. As they considered it impossible to spare Sullivan from the Council, it was left to the Lieutenant Governor to devise means for the necessary superintendence. The same remarks applied to the office of Commissioner of Crown Lands. The consolidation of the two offices, in their opinion, was of great importance to efficient management.

In September, Lieutenant Governor Arthur wrote to Secretary Russell his own opinion of the Report.<sup>2</sup> He announced that Sullivan had been relieved of the office of Surveyor-General and Commissioner of Crown Lands, and that Mr. Kenneth Cameron, formerly Sheriff of the Niagara district, had been placed temporarily in charge. Like the Council, he exonerated Sullivan, chiefly on the ground of his industry as President of Council. The Report had pronounced a verdict of failure on the scheme of uniting the two offices, at least when the head of the double office was also President of Council. How far it might have succeeded otherwise was difficult to surmise. One of Sullivan's clerks in the Crown Lands office, a gentleman by name of Tod, had been accused before the Committee of misappropriating official funds, and had been dismissed on recommendation of the Executive Council. Sullivan had made up the deficit so created, and Arthur now suggested that in order to reimburse him he be allowed a salary as Surveyor-General. Comment on so extraordinary a proposal is unnecessary.

The findings of the various Committees were left over for application until after the union of the provinces.<sup>3</sup> Early in 1840 Arthur had received notice of the formation in London of the Board of Commissioners for managing the sale of lands in the British colonies and promoting a well-regulated emigration to them.<sup>4</sup> A copy of the Instructions for the Commissioners also was sent. As already mentioned, all lands were to be sold for cash at a set price, the resulting funds to be used mainly as a revenue for emigration and also for the internal improvement of the colonies concerned. But in British North America the situation was unusual. In Upper Canada and New Brunswick the sale and management of waste lands was vested by local enactments in the provincial authorities, with whom the Crown had no right of interference. In Lower Canada public affairs were in too disturbed a state to admit of the introduction of new regulations, for a time at least. In Nova Scotia and Newfoundland it seemed probable that laws similar to those of Upper Canada and New

<sup>1</sup>Minutes of Council, August 13, 1840. State M, page 485.

<sup>2</sup>Q 427, II, page 344.

<sup>3</sup>Russell to Arthur, October 31, 1840. Q 428, page 225.

<sup>4</sup>G 95, I, page 18. Instructions on page 416.

Brunswick soon would be passed. "In general, therefore, it may be stated," ran the Instructions, "that you will have no power to contract for the sale of lands situate in British North America." It was intimated, however, that co-operation with the local authorities would be expected in the matter of emigration and of furnishing general information with respect to lands.

Although the new arrangement was thus made inapplicable to Canada, it is interesting to note the general attitude of the Home Government towards the whole question, after so many years of experience in various quarters of the globe. "In every colonial possession of Great Britain in which wild and unoccupied lands have been found, one general principle of law has been universally acknowledged. It is, that such lands are vested in the Sovereign in right of the Crown, and that every private title must rest upon a Royal grant as its basis . . . . In later times, and more especially since 1831, another principle not less important, or in itself less clear, has been most distinctly acknowledged and most inflexibly observed—it is, that the Sovereign holds the lands in question in trust for the public good, and cannot, without a breach of that trust on the part of responsible ministers of the Crown, be advised to make to any person a gratuitous donation of any such properties. It must be appropriated to public uses and for the public benefit. Of these uses the first in order are such as respect the future improvement of the colony in which the lands are situated . . . . These and similar objects being provided for, the next use of the waste lands in the colonies is that of creating a public revenue by the sale of them. The appropriation of a part of that revenue to the ordinary exigencies of the public service will probably be found inevitable in every colony."

The later history of the Crown Lands of Upper Canada forms a part of the greater story of progress under responsible government in that province. Administration by a Crown-appointed executive group had come to an inglorious close, its failure heralded forth in the Reports of Lord Durham and the Select Committees. The efficiency or otherwise of the new machinery was as yet unknown. But in thus tracing out the failure of government to discharge successfully its duties of land settlement, the whole account has not been rendered. There remains to be chronicled the success or failure of numerous unofficial experiments along the same lines.



Facsimiles of the signatures of Earl Durham and William Lyon Mackenzie.



## CHAPTER VIII.

### CORPORATE AND INDIVIDUAL EXPERIMENTS.

In 1794 an enterprising German named William Berczy saw Simcoe's proclamation offering free lands in Upper Canada. He had at his command some sixty families of German colonists newly come from Hamburg, whom he had settled in the Genesee valley in New York State. On May 17th he petitioned Simcoe in Council for 1,000,000 acres for a colonization scheme, proposing eventually to settle two thousand families. His associates were Dederic Conrad Brauer and Charles Lewis Brauer, both of New York City.

Hammond, the British ambassador in New York, had recommended Berczy by letter to Simcoe and Chief Justice Osgoode. But the Executive Councillors were unwilling to grant so large an area to any one person or company, so the associates received only 64,000 acres, with a promise of more to follow when they should have proved their ability to support the settlers first brought in.<sup>1</sup> In June the first sixty families reached Niagara, where they remained for six weeks while their leader considered in what part of the province he should choose the lands assigned for their settlement. With Simcoe's consent, he bargained with the Six Nations Indians for a part of their lands on the Grand river. But the price did not suit him, and a free-grant area some forty-five miles north-east of York, in Markham township, was taken instead.

The settlement of which this was the nucleus was destined in course of time to become one of the most prosperous in the province. But from the viewpoint of its promoters it was scarcely a success. The condition attached to Berczy's own portion of the grant was that he should open out that part of Yonge street which ran past his lots, in the same way as Dundas street had been constructed, by September 15 of 1795. With this condition he failed to comply, and the grant was rescinded in April of 1796. But since he had been at some expense in trying to carry it into execution until obliged to stop by reason of sickness among his labourers, it was recommended that he be granted such a portion of land elsewhere as Simcoe might deem a proper remuneration.<sup>2</sup> In October, Simcoe having left the province, Russell bestowed this compensatory grant. But Berczy was dissatisfied. According to his own account, he asked Russell for the usual patents for himself and his settlers, whereupon he was informed for the first time that, being aliens, no patents could issue prior to seven years' residence in the province.<sup>3</sup> Then came the regulation rescinding all grants to associated companies unless settlement had been made. Berczy was one of the chief sufferers.

He brought the matter to the attention of the Home Government. In 1801 the petition was referred back to the Executive Council for a report

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<sup>1</sup>Minutes of Council, Land and State A, page 127.

<sup>2</sup>Minutes of Council, Land and State A, page 374.

<sup>3</sup>M 137, Berczy Papers, vol. I, page 18.

thereon, with a note to the effect that if Berczy's allegations were true the land should be regranted to him immediately.<sup>1</sup> The Council thereupon presented a report reviewing the whole history of the case.<sup>2</sup> It stated that Berczy had claimed settlement of the 64,000 acres, with an expenditure of £15,000 in connection. The Council pointed out that he had no personal claim to so large an area; his pretensions in this respect were described as being "upon exactly the same foundation as those of many other persons who have been less persevering than himself." In reality the grant applied to the whole body of settlers and associates; he was entitled personally to 1,200 acres only. Nor had Berczy himself been without fault in the transaction. By a return made to the Council in June of 1797, he had reported seventy-four families on the land. As a matter of fact twenty-one of these "families" were unmarried men, some being boys not over sixteen years of age, and all too poor to have servants. Furthermore, of the fifty-four families remaining, four had joined the main body at Niagara and hence had not been brought into the country, while two heads of families had died. Of the forty-seven families remaining, twelve had left the township and two had left the province. Hence only thirty-three families really were his settlers. The report further criticized the class of settler brought in, as being ignorant, poor and lazy, while much of Berczy's expenditure had been foolish and ill-advised. On the strength of this report the petition was refused.

The unfortunate promoter had left Upper Canada in 1799. Until his death in 1813 he continued to reside in the United States. Five years later his son petitioned Maitland for a grant of land in recompense for his father's losses. Referred to the Executive Council, that body recommended a grant of 2,400 acres.<sup>3</sup> Lord Bathurst confirmed it, but stipulated the usual conditions of residence and cultivation.<sup>4</sup> So ended one of the first large-scale land settlement schemes attempted in Upper Canada. Berczy had expended upon it no inconsiderable amount of money and labour, and had achieved a measure of success. But like most land promoters, then and now, he under-estimated the difficulties of the venture, and before he could prove by results his ability to complete what had been begun he suffered the common fate of the associated companies.

A venture of a different sort was that of the French Royalist *émigrés*.<sup>5</sup> When large numbers of Royalists fled to England at the forming of the Directory, private charity was called to their support. It was supplemented in 1793 by a tax, but after some nine million dollars had been secured it was seen that the arrangement could not continue indefinitely. Monsignor Hubert, Bishop of Quebec, had suggested the bringing over of some of the exiled French priests for the church in Canada. From this suggestion came the project of transplanting a whole colony of the *émigrés*. Four of their number were sent to Quebec with instructions to prepare for the settlement of a colony of between three thousand and six thousand persons. Simcoe was consulted; he offered to settle small groups along Lakes Erie and Ontario or on the rivers emptying into them. The envoys were pleased

<sup>1</sup>Q 278A, page 226.

<sup>2</sup>Minutes of Council, State C, page 151.

<sup>3</sup>Minutes of Council, Land J, page 471, October 27, 1818.

<sup>4</sup>Q 319A, page 194.

<sup>5</sup>The story is related in detail in Textor, "A Colony of Emigrés in Canada."

and the Executive Council set aside a township at the west end of Lake Ontario, near Burlington Bay. Unfortunately, just at this time events in France encouraged a belief that the Royalist cause might revive; the whole plan was dropped and the order for lands in Upper Canada was rescinded.

Two further attempts to secure lands in Canada, made in turn by two prominent Royalists, were defeated by the unwillingness of the British Government to share the expense. But a new leader appeared. Joseph Geneviève, Comte de Puisaye, had headed the Royalist cause in Brittany. At his suggestion a British expedition had been despatched in 1795 to aid against the Convention, but it had been defeated, and Puisaye himself had lost influence through charges of complicity in the defeat. In 1797, while a refugee in England, he made a new proposal for a settlement of Royalists in Upper Canada.<sup>1</sup> It possessed attractions for British statesmen because of the opportunity it offered for solving the whole *émigré* problem, apparently at small cost. The money for initial expenses was to be taken out of the existing fund for their maintenance. All of their number under fifty years of age who refused to take advantage of the plan were to suffer a reduction in the amount of their annuities from the British Government. For the first three years expenses were to be paid by the Government; after that time all expenditure towards the increase of the settlement was to be chargeable "on the totality of the new proprietors" in the form of one-seventh of the crops, until all advances had been repaid in full. A new regiment of soldiery was to be formed, with "superior" *émigrés* as officers, to perform the work of clearing homesteads; its payroll was to be taken over by the Canadian military establishment.

In July of 1798 the Duke of Portland informed Russell that a party of forty persons under Puisaye might soon be expected in Upper Canada.<sup>2</sup> He was instructed to apportion them lands in the same general ratio as to United Empire Loyalists, Puisaye to be considered a field officer and the others to be graded by rank. On November 16th, they set sail from England in the *Betsey*. It is significant of the haphazard character of the enterprise that the owners of the vessel later made many ineffectual attempts to obtain payment of the passage money and freight dues, although these had been promised "immediately."<sup>3</sup> Several persons of distinction were included in the party—the Marquis de Sainte Aulaire and the Comte de Chalus among others. Perhaps on this account, they had expressed a desire to be kept separate from other bodies of French in America, being "of a purer description."<sup>4</sup>

On October 20th, the party left Lachine for Upper Canada with twelve batteaux of furniture, "to all appearance in good spirits and well satisfied."<sup>5</sup> Nine days later they reached Kingston, where the winter was spent. Puisaye went on to York to complete the land arrangements in person. President Russell had been so impressed by the high character

<sup>1</sup>Q 286, II, page 477. This "Sketch" is unsigned, but Puisaye is very probably the author. See Textor, Introduction, page 12, footnote. The Viscount de Vaux claimed to have been the originator of the plan—see memorial to Hobart, December, 1803, Q 296, page 333.

<sup>2</sup>G 53, I, page 175. Puisaye Papers, page 4.

<sup>3</sup>Q 286, II, page 528.

<sup>4</sup>Puisaye Papers, page 13. Windham to Russell, July 30, 1798.

<sup>5</sup>Series C, vol. 619, page 12. Clarke to Green.



given Puisaye by Windham that, as he phrased it, he was encouraged "to place a degree of confidence in him which I should have been cautious of reposing at this important crisis in any other Frenchman not so well recommended."<sup>1</sup> He had decided to establish the colony between York and Lake Simcoe. The reasons given for this choice of location were specious; it was equally distant from the French settlements in Lower Canada and at Detroit, and it was close to the seat of Government, from whence aid and supervision easily could be given. A third reason may best be given in Russell's own words: "and indeed their numbers may moreover contribute to fill up an uninhabited space, through which an Indian enemy may at present advance to the Destruction of this Town before we can possibly receive warning of their approach." The feelings of the Royalists and their ladies, had they been aware of Russell's ingenious scheme for protecting York from marauding Indians, may be left to the imagination.

On November 22nd, the townships of Uxbridge and Gwillimbury, a township in the rear of Whitby not yet named and the ungranted part of Whitechurch, some 5,000 acres in all, were granted to Puisaye for his followers. One thousand acres were reserved at Gwillimbury for a town, and 1,000 acres on the lake for a town and common.<sup>2</sup> No one was to be assigned a location save through Puisaye or by special Order of Council. Puisaye himself was to receive 5,000 acres in whatever part of this area he chose. A residence of seven years was stipulated, under pain of forfeiture, and no deed was to issue before the end of that period. Under these conditions the new settlement of Windham began. By January of 1799 some progress had been made; a village had been built and some land cleared. Puisaye himself did not reside with the others, but purchased a farm at Niagara. Seed-wheat and barley were given to the settlers, and rations to the Canadian artificers and labourers working for them. It may be noted that these French settlers were the last to receive provisions from the Government.<sup>3</sup>

But already the work of dissolution had begun. De Beauvoir, a prominent member of the community, had written to Governor Prescott asking permission to leave. He had expected to find a corps of Brittany peasants who would do the community work, in which he would be a salaried officer—"mais le corps militaire . . . ne sont qu'une espoir chimérique, j'en ai acquis ici seulement les preuves." Because of the "heartrending" situation in which he was placed by this circumstance, he soon deserted his fellow emigrants.<sup>4</sup> Puisaye himself began another settlement under De Chalus, at the head of Lake Ontario, thus splitting a colony already small. The result was a disastrous failure. In October of 1799 Hunter reported that only twenty persons remained at Windham and five at Niagara.<sup>5</sup> Puisaye returned to London after the Peace of Amiens, where he died in poverty and neglect in 1827.

A legal question of some interest arose in connection with the formal granting of lands to these *émigrés*, since being aliens they could not receive

<sup>1</sup>Q 268, I, page 39.

<sup>2</sup>Minutes of Council, State B, page 243.

<sup>3</sup>Gore to Goulburn, April 3, 1813. Q 317, II, page 22.

<sup>4</sup>"Note F", and Dom. Arch., 1888.

<sup>5</sup>Q 286, II, page 379.



patents in the usual way. In 1802 Hunter submitted to the Home Government a memorandum on the subject. The Provincial Attorney-General and Solicitor-General were of the opinion that the simplest solution would be their naturalization by Act of Parliament. At this time only thirteen of the original settlers remained in Upper Canada.<sup>1</sup> In 1804 it was proposed to give Hunter the power of granting letters of denization under the Seal of the Province; in 1805 he was instructed to have a bill drawn up for the purpose of conferring grants on the *émigrés* as aliens. A general bill was presented in 1806, but was rejected by the Assembly—"The prejudices of the House of Assembly were too powerful."<sup>2</sup> The bill having failed, grants were made to most of the settlers on the spot; they were promised specifically to Puisaye and Colonel Allegre, and by implication to de Farcy, who had petitioned for his patent.<sup>3</sup> Of course such grants were void, so the Executive Council advised that, instead of a general measure, a particular bill be prepared covering such of the nominees as needed it.<sup>4</sup> In 1812 Puisaye addressed a memoir to Lord Liverpool pointing out that the matter was still unsettled although the faith of the British Government was pledged.<sup>5</sup>

The lands granted to Puisaye for settlement but not occupied had been thrown open to other settlers in 1803. The Council's proposal for the passing of a particular bill was opposed by Gore, since it would draw public attention to what was really an error on the part of the Government, the settlers nominally having been in possession of their lands for some time. As a result no action was taken until 1827, when at last free issuance of the patents was permitted.<sup>6</sup>

In striking contrast to the failure of the foregoing schemes is the success achieved by the Honourable Thomas Talbot. An Irish gentleman of good birth, station and prospects, in 1790 he joined a regiment at Quebec. When Simcoe came to Upper Canada as Lieutenant Governor, Talbot came with him in the capacity of private secretary. In due course he shared the exploratory journeys through the western part of the province. The beauty and fertility of the country impressed him; it is probable that at this time he discovered in himself that fondness for the life of the pioneer which eventually led him to abandon a promising military career for an adventure in land settlement.

Returning to Britain, in 1794 he joined the army of His Royal Highness the Duke of York in Holland, as Major of the 85th Regiment. In 1796 he was promoted to the rank of Lieutenant-Colonel in the 5th Regiment of Foot. At the Peace of Amiens he decided to retire and settle in Upper Canada, and in 1802 he returned to that province. His first preparatory step had been to secure a grant of land. For sponsors he had two sons of the reigning Sovereign, the Dukes of Kent and Cumberland. Colonial Secretary Hobart was asked to instruct Simcoe to grant Talbot a township, exempt from fees and in whatever locality he desired.<sup>7</sup> Simcoe pointed out that such a proceeding was irregular; by way of compromise

<sup>1</sup>Q 292, page 39.

<sup>2</sup>Grant to Castlereagh. Q 293A, page 77.

<sup>3</sup>Q 314, page 2.

<sup>4</sup>Minutes of Council, Land H, page 393.

<sup>5</sup>Q 316, page 217.

<sup>6</sup>Maitland to Bathurst, April 10. Q 344, I, page 227.

<sup>7</sup>Q 291, II, page 514.

it was agreed to give him a grant as a military settler, with pre-emptive rights over adjoining land in proportion to the number of settlers he should bring in. So in 1803 he received a field officer's quota of 5,000 acres in the Townships of Dunwich and Aldborough, bordering on Lake Erie; for every family he settled on 50 acres he was entitled to receive 150 acres for himself in lands reserved in the neighbourhood for that purpose.

His motives as given in letters to the Under Secretary of State were not remarkable.<sup>1</sup> He reasoned that the population of Canada was of an inferior sort, chiefly Americans and disbanded troops, and as a result the magistracy was vested in persons ill-fitted to hold authority. If settlers of a better quality were introduced this state of affairs would cease. Moreover, it was important that the flow of British emigrants to the United States be diverted to Canada. He further hinted at experiments in the cultivation of hemp. But as time went on it became sufficiently obvious that the underlying motive was his love of a pioneer life.

For thirty-five years Talbot engaged in settlement, during which time he placed permanently on the land over 30,000 settlers, receiving on their account some 302,330 acres of land.<sup>2</sup> His methods were simple; it may be worth while to repeat Lieutenant Governor Head's description of them: "He admits no applicants for land into his house, but when he feels disposed to listen to them he opens a small compartment of his window, which he closes and secures the instant he has delivered his reply. If the answer be favourable, and if the application be granted, the petitioner waits until through the window he has seen his name inscribed in pencil on a plan, upon the identical lot which he had solicited—this is all the title which exists of his location. If he deserts his lot—if he attempts to sell it, assign it, or if he neglects to perform his settlement duties, Colonel Talbot takes up a piece of India rubber which is attached to his pencil, and as he very justly expresses it, 'just rubs him out,' from which moment the man becomes as much a nonentity as the flame of a candle which has been blown out."<sup>3</sup>

In other words, Talbot considered his placing a person in possession of a lot of land to be equivalent to a location. He also considered himself entitled to watch the progress of the settler, and if he found that he was not performing his settlement duties, took it as granted that he could displace him at his discretion. He did not feel bound to limit rigidly the time for performance of settlement duties, but indulged his settlers with such further time as he saw fit. He also exercised the authority of naming the terms upon which the incoming settler was to replace the outgoing one, in the matter of paying him for such improvements as he had made. He did not exercise these powers by any actual system or specific rule, but adjudged each case upon its own merits and without keeping any written record of his proceedings or the reasons upon which his decisions were founded. He permitted assignments of locations with his special assent, but unless that assent were given he considered any attempt to assign a lot an imposition incurring forfeiture. Except at the commencement of the settlement, Talbot acted quite independently of the local government, which indeed was not acquainted with his proceedings or with the principles by

<sup>1</sup>To Sullivan, October 1802. Q 293, page 248.

<sup>2</sup>Colborne to Hay, Q 354, page 304; also Seventh Report on Grievances, page 108.

<sup>3</sup>To Glenelg. Q 398, I, page 37.

which he was governed, except that it was known in a general way that he was taking means for the actual settlement of the land under his superintendence. The Executive Councillors were not certain as to the amount of control they had over his proceedings, and the Surveyor-General did not know whether or not he had authority to displace a Talbot settler after location. No alteration took place in the settlement duties so far as the local government was concerned. These various powers were asserted by Talbot without contradiction or interference, and subsequently his proceedings were approved and his superintendence continued.

No patents were issued by him, but the settlers received certificates which the Government exchanged for patents upon application. No certificate could be obtained by a settler until he had proved himself worthy of it. "My system has been to consider no settler as finally located until he has performed the duties required of him; when those have been complied with, he obtains a certificate from me."<sup>1</sup> No favour was shown; all depended upon the settler's industry and desire to stay on the land. In this insistence on full performance of settlement duties, combined with personal supervision, lay the secret of Talbot's success.

Upon a number of occasions the Government made use of his services. In 1809 it was proposed to construct a road through that part of the London and Western districts which had been reserved for school lands by Russell in 1798. The method employed was the customary one of granting lots on either side of the new road, on condition that each settler construct the portion upon which his lot faced. To enforce due performance of these settlement duties, Lieutenant Governor Gore placed Talbot in charge of the Western district Crown lands contiguous to the road. The settlement began vigorously, but after Gore left Upper Canada in 1811 the arrangement was ignored "in the most unaccountable manner."<sup>2</sup> During Brock's administration, through lack of any proper official record of Talbot's authority in the matter, large portions of these lands were granted to private persons without any special requirement of settlement duties or even residence. Hence Talbot unwittingly incurred the obloquy of the settlers already stationed on the road. Feeling his honour pledged, he personally bought back certain of the lost lands and transferred them gratuitously to the settlers. It is pleasant to know that eventually the Home Government reimbursed him.<sup>3</sup>

Again in 1824 Lieutenant Governor Maitland found it expedient to have Talbot superintend settlement along a part of the same road running through the London district, where first efforts had failed because of desertion or lack of means on the part of the settlers, coupled with the handicap of an Indian reserve on one side of the road.<sup>4</sup> Under Talbot's direction the reserved side was thrown open to settlement. Upon at least one other occasion the Government placed Talbot in charge of the sale of school-lands in a specified district.<sup>5</sup>

<sup>1</sup>To Rowan, April 11, 1835. Q 387, I, page 245.

<sup>2</sup>Talbot to Gore, September 25, 1815. Q 393, page 126.

<sup>3</sup>Q 319A, page 62.

<sup>4</sup>Q 336, II, page 517.

<sup>5</sup>Q 337, II, page 509. 91,140 acres in the London district, 1823. Talbot at various times was authorized by government to regulate the location of twenty-four townships in all: Southwold, Yarmouth, Malahide, Bayham, Houghton, Middleton, Westminster, Dunwich, Aldborough, Mosa, Ekfrid, London, Carradoc, Orford, Howard, Raleigh, Tilbury East, Tilbury West, Romney, Mersea, Gosfield, Maidstone, Rochester and Sandwich. Q 352, page 228.



In course of time, difficulty arose in the interpretation of Talbot's powers of land granting. By 1817 he had received 15,800 acres. The Executive Council considered that the extent of reserve to be made for him was limited to a proportion of 150 acres for every 50 acres of his original grant of 5,000 acres upon which he placed a settler, making a total reserve of 15,000 acres. Otherwise he could keep on acquiring lands indefinitely, an absurdity plainly never intended by His Majesty's government in giving the original order. Hence the Council, without wishing to reflect in any way upon Talbot's ability or methods, requested that the balance of the 20,000 acres due him be granted immediately in full, and that he be prohibited from making further settlement.<sup>1</sup> The reason given for this request was the desirability of throwing open the balance of his reserves.

The real reason was a desire to settle the matter of patent fees for the Talbot lands. In March of 1817 Gore had informed Talbot that because of the cutting off of further supplies from the military chest there was a shortage of funds, and hence that it was desirable that he remit at once any sums received as fees from his settlers, and request others who had not taken out their patents to do so at once; the Receiver-General had been ordered to carry to the public account fees of every sort, whether settlement duties had been completed or not.<sup>2</sup> This matter of delayed fees long had vexed the provincial administration. When Talbot superintended the settlement of the road-lots in the Western district he took the same action as with his own settlers; no certificate was granted until settlement duties had been completed. But settlers, both here and on his own lands, often took it for granted that the certificate was practically as valid as a regular patent; Talbot himself confessed that in many instances settlers had kept their certificates seven years without making use of them.<sup>3</sup> In such cases the Land Department suffered delay in the payment of patent fees. At this time there were some £4,000 of survey money and fees in arrear.

Naturally Talbot objected, because the basic principle of his system of settlement was involved. In a counter-petition he presented his side of the affair. Early in 1818 Secretary Bathurst gave a decision.<sup>4</sup> He entirely concurred in the Council's opinion that Talbot's grant was limited to 20,000 acres. But he pointed out that Talbot's successful exertions for the settlement and improvement of the land under his care entitled him to the most liberal consideration. Hence, for the succeeding five years only, such further proportions of the reserved townships as were vacant at the time of the commencement of Talbot's settlement were to be reserved for his disposal. Payment of fees was not to be required until the usual settlement duties had been completed.

Until 1806 Talbot had received all his patents on the terms of his original grant. In that year an increase in fees took place, and he was charged at the new rate. He protested, and eventually the excess was returned to him, and later augmentations did not affect his patents. In 1821 he was granted a deed in trust for all locations he had certified, to be conveyed to his settlers and their heirs. Later in the same year Talbot petitioned against this deed, offering to surrender it and receive a patent

<sup>1</sup>Minutes of Council, Land J, page 199: 210.

<sup>2</sup>Q 322, II, page 356, *et seq.*

<sup>3</sup>Talbot to Rowan, April 11, 1835. Q 387, I, page 245.

<sup>4</sup>Q 319A, page 131.



for the quantity of lands originally allotted him.<sup>1</sup> On this grant he offered to pay the fees. In 1822 the Council accepted the offer. But the fees amounted to over £31 per 1,000 acres; Talbot had expected to pay only at the rate prevailing when he received his original grant, a matter of £5 11s. per 1,000 acres. He asked the Home Government to remit him the overcharge in view of his heavy expenditure in settlement and his losses in the War of 1812. Bathurst acquiesced, but instructed the Council to let Talbot clearly understand that it was purely a matter of "grace and favour."<sup>2</sup> But even with these favours Talbot's settlement expenses were very heavy, and in 1826 he asked for a pension. Maitland recommended it, and Bathurst authorized an annual allowance of £400.

When the sales system was introduced, Talbot asked Secretary Huskisson to except from it the lands under his charge. Maitland was consulted, with the result that Talbot was allowed to retain jurisdiction over the lands originally allotted him, but not elsewhere. Not long afterwards, the Government received evidence that this confidence was not misplaced. Lieutenant Governor Colborne had occasion to pass through the London and Western districts, settled chiefly by Talbot, and he reported on its progress in highly eulogistic terms. The province, he said, was greatly indebted to Talbot. For one hundred and seventy miles through these districts there were good roads and an extensive tract in an advanced state of cultivation.

In 1838 Talbot wound up his affairs. Lieutenant Governor Head gave Glenelg a description of his then mode of life; "although the possessor of an immense property, he still lives in his log house—still sits erect on his original hard-bottomed, straight-backed uncomfortable kitchen chair, his cell containing little furniture except sheepskins, sacks of corn, and rude implements of husbandry—in short, taking his life altogether, it certainly forms the most extraordinary picture of practical philosophy it has ever been my fortune to witness."<sup>3</sup> Head was himself responsible for Talbot's retirement. In September of 1837 he had written Glenelg advising the step; Talbot was old, and in case of death—or fire—his land business would be thrown into the greatest confusion. Accordingly Glenelg requested him, through the Lieutenant Governor, to conclude his land operations and hand over to the Executive Council their entire management.<sup>4</sup> Included in the official letter was a flattering tribute to the value and excellence of his work. In a private letter of the same date, Head jocularly suggested to Talbot that he had "rubbed him out,"—and mentioned his own successor, Sir George Arthur, as the one "who you know rubs me out."<sup>5</sup> Talbot complied, without any suggestion of annoyance, and himself offered to have a deputy surveyor examine and report on the entire settlement. So ended the most successful individual attempt at land settlement ever undertaken in Upper Canada.

An attempt which eventually achieved a measure of success, but which in other respects was wholly regrettable, is associated with the McNab of McNab,<sup>6</sup> head of the Scottish clan of that name. In 1823 he came to

<sup>1</sup>Q 331, page 159.

<sup>2</sup>Q 337A, page 81.

<sup>3</sup>Q 398, I, page 37.

<sup>4</sup>Minutes of Council, Land T, page 212.

<sup>5</sup>Q 402, II, page 258.

<sup>6</sup>"Feudalism in Upper Canada,"—Miss Marjorie Fraser, B.A., Ontario Historical Society's Papers for 1914.

Upper Canada, presented himself to Maitland, and asked for a township in which to settle certain of his clansmen. At Maitland's suggestion he petitioned the Home Government;<sup>1</sup> in the petition he described the poverty and distress of his people, many of whom were meditating emigration to America, and referred to Upper Canada as a possible place of settlement for them. He offered to bring the settlers out at his own expense, getting from them only a return of the cost, and giving them ample time to make repayment. He requested an immediate patent for the tract he would settle, or else an arrangement by which none of his settlers would receive patents without his personal certificate that they had complied with all the conditions under which they had been brought out. He claimed that in this way he would have security for what money he might expend. It sounded quite plausible, but as a matter of fact McNab had left Scotland to evade his creditors, and with the hope of restoring the family fortunes by a scheme of land settlement in Canada.

In forwarding this petition to Secretary Bathurst, Maitland pointed out the likelihood of such an arrangement in time proving embarrassing to the provincial government. Bathurst concurred in his opinion, and refused a grant.<sup>2</sup> Finally, however, McNab was granted a township on the Ottawa river next to the township of Fitzroy, to be under his direction for eighteen months "when the progress of the experiment will determine any extension of the period."<sup>3</sup> Patents were to issue to settlers only upon presentation of a certificate from McNab that the settlement duties had been performed and his personal claims adjusted, or they might issue in trust to McNab for any number of settlers certified by him. The fee on each patent was to be £1 9s. 4d. It was expressly stipulated "that the conditions entered upon between the Laird of McNab and each settler be fully explained in detail, . . . and that a duplicate of the agreement entered into between their leader and the settlers shall be lodged in the office of the Government." McNab was to assign not less than one hundred acres to each family or each male not under twenty-one years of age, and could recommend to the Lieutenant Governor an extension of any such grant. McNab himself was to receive 1,200 acres at once, and upon completing his settlement might obtain a field officer's grant of 5,000 acres. An important clause set forth "that the settlers pay the interest on the money laid out for their use by the Laird of McNab, either in money or produce, at the option of the settler, and that they shall have liberty to pay up the principal and interest at any time during the first seven years." McNab's arrangement with the settlers, as reported to Council, was that for three years after their arrival no repayment would be asked, but one bushel of wheat per acre of cleared land was to be paid as interest.

A township, named after the laird, was granted on these conditions, and settlement began. A friend in Scotland selected twenty-one families and sent them over. Before embarking, each head of a family had to bind himself to pay £36 for himself, £30 for his wife, and £16 for each child, with interest as described. McNab promised free passage and provisions, with free provisions during the first year of settlement; the latter promise was not kept. Because of the poverty of his settlers, it was not

<sup>1</sup>Q 333, I, page 122.

<sup>2</sup>Q 337A, page 133.

<sup>3</sup>Minutes of Council, Land L, page 474. November 5, 1823.

long before the yearly rental of grain fell into arrears, and McNab then held them completely in his power. To make up the requisite number for completion of settlement, he made journeys to Montreal to meet incoming settlers, and in this way induced a number to settle in his township. Eventually, he secured twenty-nine families from Scotland and thirty-six from Montreal.

It was not long before complaints arose. When McNab's settlers found themselves unable to obtain possession of their lands within a reasonable time, while in other townships independent settlers could obtain patents with little difficulty, they began to suspect their leader's honesty. McNab himself suffered somewhat in fortune. In 1835 he arranged to give up his right to the balance of the 5,000 acres due him, retaining only 850 acres in all, upon condition of receiving the pine timber rights in the unlocated lots of the township.<sup>1</sup> These he disposed of to various purchasers, but as the latter failed to live up to their engagements he got little out of the transaction. Unfortunately for the community, considerable quantities of timber were removed before the deal fell through.<sup>2</sup>

In June of 1838 an Order in Council was passed directing a patent to issue to McNab for 5,000 acres.<sup>3</sup> A second order in July of 1839 countermanded the first, stating that it had been passed in error: "The attention of the Council was not drawn at all to the circumstances above detailed, or unquestionably such an order would never have been issued."<sup>4</sup> In endeavouring to avail himself of this first order McNab had selected lots on which some of his own settlers were located, and a report on this action by a Deputy Surveyor brought up the whole question. The Council seized the opportunity of settling forever McNab's pretensions of every sort. Acknowledging that if made to pay the quit-rent of one bushel per acre per year in full the settlers would be ruined, it was ordered that the lands be valued as though unimproved and that the settlers be allowed to purchase them on the same terms as all other Crown lands. Those persons failing to purchase within a limited time would be proceeded against as trespassers on Crown property. At the same time McNab was ordered to present an actual, detailed account of his expenses in bringing in his settlers.

When the accounts were presented, a report of Council was made on them, based on the Inspector-General's examination and criticism. It was highly unfavourable; both accounts and vouchers were declared totally unsatisfactory, "the statement submitted being evidently founded on loose estimate and calculation."<sup>5</sup> Accordingly a comparison was made with the accounts of other persons who had engaged in similar work, and the Council concluded that a sum of £4,000 would cover, with interest, all of McNab's claims on the settlers. Final adjustment was then made. McNab executed an assignment of all his claims on township and settlers alike, receiving in exchange £4,000. The land was then sold to the settlers on the usual terms for wild land. Out of the proceeds McNab was to

<sup>1</sup>Minutes of Council, February 5, 1835, Land Q, page 610; also see State M, page 106.

<sup>2</sup>Minutes of Council, State M, page 124-130.

<sup>3</sup>Minutes of Council, Land T, page 326.

<sup>4</sup>Minutes of Council, State M, page 106.

<sup>5</sup>Tbid, page 185.



be paid, but not before the money actually was received. Any money already paid to him by the settlers was deducted from the purchase money. A single exception to this general arrangement was one Donald McNaughton, who had paid McNab in full. Lieutenant Governor Arthur approved the terms of the bargain, and McNab's connection with the Crown Lands Department ended.

The person largely through whose influence McNab first obtained his grant was Peter Robinson, brother of John Beverley Robinson, and founder of a Government-aided Irish settlement close to the MacNab township. His reason for encouraging McNab was his desire to have near his own rather turbulent settlers a community of sober, industrious Scots who might act somewhat in the nature of an example. About the year 1823 there was a considerable exodus of Irish agriculturists, estimated at about 20,000 annually, many of whom landed at Quebec, but usually drifted to the United States, because the expense of the journey to Upper Canada was beyond their means. Robinson pointed out the desirability of retaining such persons in Canada, and eventually arranged with the Government a settlement scheme to that end.<sup>1</sup>

A settlement was formed under his supervision in the Township of Ramsay. Transportation from the port of landing to the township including provisions, was wholly at the public charge. Such utensils as were absolutely necessary were supplied free to each head of a family, with provisions for a period of one year. No one over forty-five years of age could be brought into the settlement except by special consent of the superintendent, and such persons were not to receive land. Every other male person, having a certificate of acceptance by the superintendent, could obtain a location ticket for seventy acres, with an additional thirty acres to be reserved for purchase at a later date. The price set for the latter was £10 sterling. The location ticket specified the settlement duties, which corresponded in general to the customary duties on all Crown Lands. A patent would issue upon completion of the duties and payment of the patent fee. Each seventy-acre lot was to be subject to a quit-rent of one penny per acre, payable to the Government half-yearly. The same quit-rent was to be charged on the additional thirty acres until paid for. At any time a settler might redeem his quit-rent by payment of twenty years' purchase. No quit-rent was to be exacted on the first seventy acres until five years after location. As in the case of other Upper Canada lands, neglect of settlement duties would forfeit the grant.

In June of 1825 Secretary Bathurst informed Maitland that Robinson had embarked two thousand settlers, and asked that every assistance be rendered the scheme, as His Majesty's Government was strongly interested in it.<sup>2</sup> In 1825 a report on the Irish settlers under Robinson showed a total of 778 acres cleared by those first settled. Maitland thought highly of the settlement, but the Home Government was not easily pleased. In November of 1825 Robinson sent in a bill for £1,000 for emigration expenses as Superintendent of Emigration from the south of Ireland. The Treasury Lords requested Bathurst's opinion as to its payment. In December Robinson sent in a bill for £2,000, and in March of 1826, for

<sup>1</sup>Minutes of Council, Land L, page 445.

<sup>2</sup>Q 371A, page 38.



£3,000. The Commissioners of Audit demanded certain explanations and accounts in connection with his claims, and Robinson's delay greatly annoyed the Colonial Secretary, who instructed Colborne to suspend him from his office of Superintendent unless he made the requisite explanations at once.<sup>1</sup> Eventually the situation cleared, but Robinson's explanations were not very graciously received.

Robinson's venture may be said to have been official rather than private, as he acted throughout merely as an agent for the Government. Yet much of its success must be credited to his common sense in making and carrying out the arrangements. Especially was that quality displayed in the choosing of tools and in similar details of the work of preparation, matters which as a rule were more or less neglected by settlement promoters.<sup>2</sup>

Certain other persons who attempted settlement without special Government aid were less successful. A typical example is that of Willcocks, already described.<sup>3</sup> Another is that of Donald Cameron, who from 1821 to 1824 was engaged in bringing Scotch settlers to Upper Canada. In 1825 the Executive Council recommended that Cameron receive 1,200 acres for himself, with Eldon and Thorah Townships reserved for his settlers. The latter were engaged in labour in various parts of the province; Cameron was to place them on the reserved lands by May of 1827. In April of that year he petitioned the Council for more time, as some of his settlers needed financial aid to reach their lands. The time was extended to November 1st. On November 6th he asked for more time, and was granted till July of 1828. In January of 1829 seven persons of Cameron's settlement petitioned for an extension of time in which to complete their settlement duties, alleging poverty and other hindrances. They were granted six months' extension. In October Cameron, as agent for some forty persons, sent in a similar petition, and Council allowed a six months' extension to all who could prove they had actually settled on the land and improved it to some extent. In November came a petition from very much the same persons, requesting practically the same favour.

Meanwhile the Council had been troubled by various technical difficulties concerning private transfers of lots by some of Cameron's settlers. It developed that only a small part of the land really had been settled and improved. A reputable person of the neighbourhood was deputed to hold an inquiry; his report, with that of the Surveyor-General, showed that about 380 of the lots never had been occupied. In addition, two cases of perjury with respect to settlement duties were proved. The Council therefore recommended that all the lots not actually settled be thrown open, twelve months' public advertisement first being ordered in fairness to any settlers who might be in the province though not on the land.<sup>4</sup> To Cameron's petitions for leniency the Council turned a deaf ear, averring with some truth that he had been indulged until it was found there was no prospect of his performing the conditions of his agreement.

Yet another unsuccessful projector of settlements in Upper Canada was Lord Selkirk. His idea was to establish a colony expressly for Irish Roman Catholics in some unoccupied part of North America. At first

<sup>1</sup>Q 373A, page 22.

<sup>2</sup>Q 334, page 317.

<sup>3</sup>Vide Chapter III.

<sup>4</sup>Minutes of Council, Land O, page 352, November, 1830.

he thought of establishing it in the neighbourhood of Lake Winnipeg, but the scheme fell through because of the monopoly held by the Hudson Bay Company. He then asked Secretary Hobart for a grant of land at Sault Ste. Marie, in Upper Canada, with the rights to any minerals he might discover on the north shores of Lakes Superior and Huron.<sup>1</sup> Lord Hobart suggested that a settlement should be commenced with people more tractable than the Irish, so Selkirk offered to find German settlers. He also informed Hobart that a sufficiency of "those valuable people," the Scotch, could be obtained. He hoped to settle between eight and twelve hundred families from Scotland and Ireland in the course of a few years. This project also failed, mainly through a claim to the St. Mary lands on the part of the North-West Company, the rival of the Hudson Bay Company. Finally, in 1803, Hobart instructed Lieutenant Governor Hunter to grant Selkirk, if he arrived in Upper Canada on a plan of settlement, 1,200 acres of land in any unappropriated township he might prefer. The grant was to be subject to the usual conditions and reservations.<sup>2</sup> The rest of the township was to be reserved for later extensions of the settlement, at the rate of 200 acres for each family brought in, on condition that its head was placed in actual possession of 50 acres. This arrangement recalls the Talbot settlement.

Selkirk chose his land at Baldoon, on Lake St. Clair, near Bear Creek. He had not sufficient sense to examine the ground in person in summer time; it was practically a swamp, and the mortality among his settlers was frightful. In May of 1806 he asked for 2,800 acres, being 200 acres for each of fourteen families brought in. It was refused, because he had not placed each family definitely in possession of 50 acres.<sup>3</sup> In January of 1807 Selkirk repeated his request, and the Council offered to comply if his agent would execute a bond for £500 guaranteeing that in six months the 50 acres would be given to each settler.<sup>4</sup>

Meanwhile Selkirk had complained to Secretary Windham of what he considered inconveniences in the conditions annexed to his grant; the complaint was transmitted to the Executive Council, who reported that Selkirk's principal request was for an extension of time for settlement. It was pointed out that such extensions were detrimental to settlement in general.<sup>5</sup> Because of his exceptionally heavy expenditure, however, the Council considered that the time might be extended to February of 1812. But he also wanted to have the number of families reduced from 250 to 100; the Council pointed out that such a request was unreasonable. He wanted the islands adjacent to his grant; he wanted the Crown reserves; he wanted permission to purchase from the Mohawks a tract on the Grand River. The claims of four persons who already had purchased these Indian lands Selkirk dismissed, terming them "needy adventurers." On these points the Council would not give a decision, but pointed out that precedent was against compliance. Eventually Selkirk had to content himself with permission to lease the Crown reserves and to purchase from the Indians one township, then vacant, provided they would recommend him as a purchaser.

<sup>1</sup>Q 293, page 201. July, 1802.

<sup>2</sup>Q 294, page 35.

<sup>3</sup>Minutes of Council, Land G, page 60.

<sup>4</sup>Minutes of Council, Land G, page 215. January 27.

<sup>5</sup>Ibid, page 348.

Unfortunately, for the success of the project, the Home Government took no notice of the Council's recommendation that the period of settlement be extended. Accordingly, in June of 1809, upon application by Selkirk's agent for 2,200 acres in right of eleven settlers brought in, the Council determined that it was not authorized to extend the time. In September of 1818, on a reference from Selkirk, the Council decided that although twenty-six families had been settled, while Selkirk had received land only for fifteen, the application for the balance was too late to receive consideration.<sup>1</sup> Land had been reserved for his settlement for fifteen years, yet it had made little progress, thus demonstrating the "impolicy of keeping it shut up any longer." But since the proposal to extend the time might have induced Selkirk to persevere longer than was intended, a 2,200-acre grant was issued to him on account of the remaining eleven settlers, upon satisfactory proof that each had received fifty acres. The rest of the reserved land was thrown open at once.

Selkirk transferred his settlement activities to Prince Edward Island, and eventually to the Red River, in what is now Manitoba. But the Council had not yet ended all connection with him. In 1819 a petition from several members of the Red River colony was presented to Maitland, citing a long list of grievances against Selkirk, and asking aid to return to Upper Canada. Later they asked for grants of land, which Maitland refused for fear of injuring the Red River settlement. The petitioners asked aid to return to Britain if grants could not be given them; finally, to keep them from going to the United States feeling aggrieved, the grants were bestowed, and in due course Secretary Bathurst intimated his approval.<sup>2</sup>

Usually land companies play a prominent part in the development of new countries, but Upper Canada knew only one land company whose operations attained to any magnitude. In 1823, in connection with the war losses claims, the Scottish novelist, John Galt, came to Upper Canada as head of a commission of inquiry into its resources. Out of this inquiry grew the Canada Company. Galt was impressed by the wonderful possibilities of settlement in this new province, and proposed to the Government a land company on a large scale as the best means of successfully accomplishing it. The company, formed in 1823 with a capital of a million sterling, was composed largely of business men, and was purely a commercial enterprise. Galt's original idea had been that the company should take over all the unassigned land in the province.<sup>3</sup> This proposal being refused, because it implied a monopoly, and the Government seeing in the general scheme a way of getting rid of a political and material nuisance, Galt was asked to confine the plan to the Crown reserves, in order that its merits might be "subjected to the test of an experiment on a small scale before being tried with respect to the greater contemplated."<sup>4</sup> It was hoped that the settlement and cultivation of these reserved Crown lands not only would remove a cause of discontent, but would render available a sum of ready money for the discharge of claims against the Government for losses incurred in the war—another cause of political discontent. It

<sup>1</sup>Minutes of Council, State G, page 491.

<sup>2</sup>Q 325, II, page 351. Q 319A, page 210.

<sup>3</sup>Q 368, I, page 49.

<sup>4</sup>Q 359, I, page 1.







was also hoped that it would eventually provide a means of financing public works on a large scale. At first only 1,000,000 acres of Crown reserves were contemplated; later the whole of the clergy reserves was added.

Galt did his business with the Government through Under Secretary R. Wilmot Horton, who recently had completed a similar transaction in connection with the Australian Company. While engaged in the formation of the new company Galt obtained much information from John Beverley Robinson and Dr. Strachan, both of whom were in London at the time, and from William Dunlop, later Warden of the Forests for the company. Dunlop warned him that Lord Selkirk had lost a promising settlement "from want of ascertaining that the air was salubrious."<sup>1</sup> By August of 1824 the subscription was filled up, the first instalment of the capital paid, and the first meeting of directors held. It was decided to appoint Messrs. McGillivray and Galt commissioners for ascertaining the price of lands. They were instructed to report to the Lieutenant Governor of Upper Canada, at York, who would give them a commission authorizing them to execute the duties of their office. The contract was to cover the purchase of 1,384,413 acres of Crown reserves and 829,430 acres of clergy reserves. Three other commissioners were to assist in considering the matter of price, two appointed by the British Government through Lieutenant Governor Maitland, and one by both Government and company.<sup>2</sup>

The commissioners duly met at York, accumulated information from various quarters, and submitted a report placing the valuation at 3s. 6d. per acre. The Clergy Corporation, headed by Strachan, objected strenuously; Strachan claimed that 8s. 6d. per acre was a reasonable price for the clergy reserves, allowing for twenty-five per cent. advance in price as settlement extended. In February of 1825 the Clergy Corporation had petitioned Maitland for the appointment of a commissioner from their body to aid in deciding the value of the lands, and in March had petitioned the British Parliament asking that the clergy reserves be withdrawn from the purchase and that no sales of them be made save by the Clergy Corporation. This opposition was extremely distasteful to Galt, who always wanted matters rushed through in a minimum of time. The Government ordered an investigation, and Sir Giffen Wilson was named to examine and criticize the report. J. B. Robinson also criticized it; their combined comment resulted in its non-acceptance by the Government on the ground of non-fulfillment of instructions.<sup>3</sup>

The chief fault appears to have been lack of deliberation. The first meeting of the Commissioners was on March 16th, the last on May 2nd: in other words, they took only six weeks and five days to value 2,100,000 acres of land lying in detached lots over the surface of a country little smaller in area than Great Britain.<sup>4</sup> The reports, field notes and charts of the Surveyor-General's office were used: neither Wilson nor Robinson valued these sufficiently. Robinson criticized the Commissioners for staying at York and not going out through the country on personal investigation.

<sup>1</sup>Q 359, I, page 60.

<sup>2</sup>The three commissioners other than Galt and McGillivray were Francis Lockburn, John Harvey and John Davidson.

<sup>3</sup>Q 368, I, page 4.

<sup>4</sup>Q 362, II, page 312.

He also declared they took into account too many sheriff's sales, at which the prices necessarily would be low. On the other hand, he neglected the fact that a company purchasing on so large a scale had to have an abatement in price; he argued as though it were a matter of a few thousand acres of personal sale. Lord Bathurst, in common with other critics, objected to the taking of averages for each district or township instead of one average for all. In rejecting the award he suggested a reconsideration of it by the commissioners. But it was pointed out that those officials, having made their report, ceased to exist as such.

The Company directors then suggested the appointment of referees. Galt was nominated as the Company representative; Sir John Richardson was to have represented the Government, but ill-health prevented, and as Strachan happened to be in England he was appointed instead.<sup>1</sup> The clergy reserves, the real bone of contention, were dropped out of the bargain and remained to vex Upper Canada politics for many years longer. For them was substituted the Huron Tract,<sup>2</sup> comprising 1,000,000 acres of the London and Western Districts, at the same total price as offered for the clergy reserves. Choice of locality remained with the company, as it was thought wise to have the tract as regular in shape as possible. The Government agreed to bear the expense of survey. Two-thirds of the purchase money was to be paid to the Government and one-third expended in local improvements and public works. The Government was to be given an estimate of all such works, and must consent to their construction. The reason for this permission to expend a part of the purchase money was that the Huron Tract, being new land, was without those advantages of roads and contiguity to settlements which the clergy reserves had possessed. The company was allowed sixteen years in which to fulfil its contract; at the end of that time the unsold lands either were to be abandoned or taken up. For worthless land the company was to be compensated by the Government. As a matter of fact, about 100,000 acres later were deducted for swamp.

The total purchase money was £2,484,413, to be paid as follows:

In 1827 .....	£20,000
In 1828 .....	15,000
In 1829 .....	15,000
In 1830 .....	15,000
In 1831 .....	16,000
In 1832 .....	17,000
In 1833 .....	18,000
In 1834 .....	19,000
In 1835 .....	20,000

and £20,000 yearly for the next seven years. It was arranged that the yearly payments should be appropriated by the Provincial Government to supply the civil list.<sup>3</sup> The chief reason assigned for the new arrangement was that the clergy reserves were secured to the clergy under a direct Act of Parliament, and therefore only an Act of Parliament could effect their sale. Any intimation that the commissioners had not fully carried out their instructions must cause the Secretary of State to impede the charter, unless the rights of the clergy could be secured in some other way.

<sup>1</sup>Q 369, page 59.

<sup>2</sup>Q 352, page 45.

<sup>3</sup>Q 371A, page 240.



In June of 1825 an Act of Parliament, modelled largely on the similar Australian Act, had given legal status to the Canada Company. Lieutenant Governor Maitland, acting on instructions from Bathurst, had requested the Clergy Corporation to cease granting leases of clergy reserves until further instructions from the Home Government. In April the Assembly sought information as to the formation and objects of the new company. Maitland replied: "Generally the objects of the intended company will be to purchase waste and uncleared land in this province, and to settle, clear and dispose of such lands, together with the subsidiary objects of making advances of capital to settlers, opening and improving roads and other internal communications, and promoting the cultivation of such articles as can advantageously be exported from the province."<sup>1</sup>

By the charter, which the company received in August of 1826, it was to have a Governor, Deputy Governor, and sixteen other Directors, four Auditors and a Secretary. Charles Bosanquet was the first Governor; Galt was the first Secretary. The company was to be permitted to manage its affairs in Upper Canada by a Commission of two or more persons resident within the province, under the control of the Directors. The company was given power to loan money for the construction of local public works. The scheme of settlement contemplated was one by sales purely.

Upon commencing work in Upper Canada Galt found difficulties in the way. The Alien Bill prevented United States settlers from buying Crown lands, and his criticism of it was distasteful to Lieutenant Governor Maitland, who accused Galt of "condemning as crude and absurd the most solemn decisions of English courts of justice."<sup>2</sup> As a result, the directors of the company saw fit to censure their too zealous Secretary. Another target for his criticism was the new system of land sales or quit-rents. He even imputed to the Upper Canada Government a design of injuring the company by competition. But the Home Government assured him that the only case in which the system could work to the prejudice of the company would be when too low a value was put on lands, and the strictest injunctions would be given to the local Government against injuring the company in any way.<sup>3</sup> It was further pointed out to him that since for the first seven years quit-rent would be forthcoming to compensate for the loss of the former fees, the deficiency would have to be supplied from the annual payment of the Canada Company.

Settlement proceeded, and in April of 1827 the town of Guelph was founded. Galt succeeded to some extent in directing emigration toward the company lands, but it was an expensive process, and the directors, in common with their kind, had great expectation of large and immediate dividends. The land was sold to incoming settlers on credit at five years' time, payment being made in six instalments. Occasionally interest was charged. The greatest profits made by the company were from the selling of Crown reserves situated in the older settled parts. It was difficult for the shareholders to realize that there could be no immediate market at high prices for the lands farther away from settlements, and that the rate of rise in values varied directly with the rate of settlement, while

<sup>1</sup>Journals of Assembly, Upper Canada, 1825-8, page 89.

<sup>2</sup>Q 341, page 67.

<sup>3</sup>W. Horton to Galt, March 8, 1826. Q 368, page 48.



future success depended largely on their ability to advance large sums for improvements. Galt was not the most practical of men, and complaints of ill-management began to appear. The published report of the company in 1827 was a gloomy affair for expectant shareholders. In 1828 Galt resigned his position of secretary; the two succeeding holders of that office bore the uninteresting names of Smith and Jones respectively.

In 1829 the financial affairs of the company were deemed so unfavourable that a general meeting of shareholders was held for the purpose of discussing future action. It was resolved that the directors be instructed to negotiate with the Government the reconsideration or else the relinquishing of the existing agreement, and that no further calls for capital be made without the assent of another general court.<sup>1</sup> At a second meeting it was decided not to answer such calls for capital as would enable the directors to pay the instalment of £7,500 due the Upper Canada Government on June 20th of that year, and to urge on the Government the fact that the company would have to dissolve if obligations were pressed. In reaching this decision, blame was cast on the Government for not abiding by the first award as to price of purchase, the acquiescence of the directors to the substitution of the Huron Tract having been practically compulsory. The long period of delay due to the change of purchase had caused confusion in the sale of the company's stock; many persons had advanced money on the shares as security, and the shares had gone down in price because the clergy reserves, the most valuable part of the original purchase, had been abandoned.

Eventually, however, the directors experienced a change of heart, and decided to order payment of the instalment due the Upper Canada Government, at their own risk but with every expectation, in consequence, that the Government would give attention to their situation. A request was made that the company be allowed to relinquish the scattered Crown reserves and concentrate on the Huron Tract, or else that the company be given an amount of land in Crown reserves corresponding in value to the amount paid to the Upper Canada Government, and then by Act of Parliament allow the sale of these lands for the benefit of the shareholders, following which the company would wind up its affairs.

The Colonial Office, however, preferred not to grant a modification of this sort, realizing that it would be better to let the company fail and then deal with the situation. Moreover, it would form a nasty precedent for the Australian Company and others who might wish to go back on their agreements.<sup>2</sup> The company's representatives in Upper Canada interviewed Colborne on the point; he disapproved any such plan, and the Home Government, in view of this "local" advice, refused to consider it. In October the directors, on their own responsibility, ordered the payment of the next £7,500 instalment due in December, but pointed out that unless their requests were granted the company must dissolve. In November two of the directors interviewed the Under Secretary for the Colonies, and after some discussion obtained permission to take lands in proportion to the amount of money paid to the Upper Canada Government as previously requested, prior to winding up the company's affairs. But they requested

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<sup>1</sup>Q 373, page 1.

<sup>2</sup>Q 373, page 223.

permission to continue operations for two or three years should the shareholders so desire, with liberty at the end of that period either to dissolve or continue. At a general meeting of shareholders in January of 1830 the question was put, and it was unanimously resolved that "this court . . . earnestly recommends it to the court of directors to carry into effect the objects of the company."<sup>1</sup> Possibly encouraging reports of operations in Upper Canada had something to do with this attitude; at any rate, from that time on the affairs of the company appear to have changed for the better.

The threat of suspended payments had caused a minor panic in governmental circles at York; Colborne was authorised by Secretary Murray to appropriate for the civil list, in case of emergency, the proceeds of any sales which might have been made by the Commissioner of Crown Lands. Colborne quite frankly blamed the company's difficulties on its expensive establishment, and described their troubles as being the same as those to which most land speculators are liable. At the same time he acknowledged the benefit to the province from "the spirit of enterprise with which the exertions of the company have been conducted."<sup>2</sup> In the end, of course, it was unnecessary to make use of the alternative source of revenue indicated, but the incident was not without result. Secretary Murray instructed Colborne that, in order to meet such an emergency in future, it was desirable to make a new distribution of the annual sum to be received from the company; as many salaries as possible were to be transferred from that sum to their former source of revenue, thus leaving each year an "emergency" surplus from the Canada Company's payments.<sup>3</sup>

An interesting incident in connection with the early activities of the company, while Galt was still in office, had to do with the so-called "La Guayra settlers." These wanderers from Scotland had been persuaded in 1825 to embark for Venezuela, under the patronage of a company of merchants in London known as the Colombian Agricultural Association. On their arrival they found that the company had been deceived by its agents as to the soil and climate of the proposed settlement. Their means exhausted, they applied to the British Consul-General for relief. By direction of the British Ambassador to Colombia, which then included Venezuela, the consul gave them temporary means of subsistence and sent them to the United States, from thence to be forwarded to His Majesty's North American dominions. Upon arrival at New York the British Consul, Buchanan, advised settlement in Upper Canada, although their original destination appears to have been Nova Scotia,<sup>4</sup> and directed them specially to the Canada Company. In due course they reached the company's lands, and applied to Galt. The latter had no instructions and could only advise them to proceed to Guelph and there work until some arrangement could be made.<sup>5</sup>

In all, the emigrants numbered 135 souls, of whom 58 were children under thirteen years of age. Many were in bad health, and all were in need of the necessities of life, and hence cost the company no little trouble.

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<sup>1</sup>Q 373, page 52.

<sup>2</sup>Q 373, page 21.

<sup>3</sup>Q 373A, page 6.

<sup>4</sup>Q 344, II, page 420.

<sup>5</sup>Q 346, II, page 333.

But they were treated with kindness, and received clothes and medicine. Later they were told they could buy lands from the company on credit in payment for these expenses. Meanwhile Galt had proposed that the Upper Canada Government defray the cost of their transportation from New York and the cost of their maintenance, and on that account retained £1,000 out of the sum which was to be paid to the Upper Canada Government in July of 1827. Maitland objected violently to what he considered an unreasonable and inexpedient request, pointing out that Galt intended these settlers to become purchasers of the company lands. He claimed that the settlers had been stopped in New York by the company's agent and transported to Upper Canada for that purpose. When the matter came up before the directors they disavowed Galt's proceedings and ordered him to repay the thousand pounds. But in order to rescue the settlers from the misery inevitable upon their being turned adrift so near to winter, Maitland was authorized by the Home Government to give them what relief was absolutely necessary.<sup>1</sup>

The report to the company's shareholders in June of 1830 was more optimistic: "Since the last report . . . great retrenchments have been made in the management of the Company's affairs."<sup>2</sup> The assets, after payment of all debts in Britain and Canada, consisted of cash to the amount of £53,000 and 305,000 acres of land paid for and remaining unsold, with the improvements thereon. In April of 1831, at the half-yearly meeting of the shareholders, the directors were requested to prepare a statement as to the advisability of declaring a dividend. In December Colborne reported that the company's concerns were in a prosperous state, a judgment confirmed by the financial statement made to the shareholders that month, showing a balance in hand of well over £16,000.<sup>3</sup> Special agents were sent to Quebec, Montreal and New York for the purpose of forwarding emigrants to the company lands, and settlement proceeded rapidly. An abstract of lands sold during the year 1833 showed 28,275 acres of Crown reserves and 27,509 acres of the Huron Tract,—a total of 55,784 acres, as against 92,626 acres of Crown lands, clergy reserves and Indian lands sold during the same year by the Upper Canada Government.<sup>4</sup> As the value of the Huron Tract lands had more than trebled since their purchase, the business clearly was a profitable one.

In 1834 there were about 2,500 persons settled in the Huron Tract. Colborne admitted that the company's exertions had tended greatly "to turn the current of emigration towards Canada."<sup>5</sup> But he used this success as an argument to prove the inadvisability of making further grants to large companies, as the Government could perform the work quite as well if not better. He cited the North American Colonial Association of Ireland, which had applied for permission to purchase 500,000 acres adjoining the territory of the Canada Company. In 1838, with two-thirds of the contract time elapsed, two-thirds of the company's lands had had patents taken out on them: Guelph contained a population of nearly 2,000, while the Huron Tract had 4,500.<sup>6</sup> Up to January of that year approximately £27,500 had

<sup>1</sup>Q 371A, page 255.

<sup>2</sup>Q 373, page 89.

<sup>3</sup>Q 378, I, page 134.

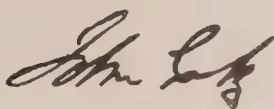
<sup>4</sup>Q 382, I, page 23.

<sup>5</sup>Q 383, II, page 245.

<sup>6</sup>Journals of the U.C. Legislative Assembly, Appendix 1837-8.

been expended in improvements. When the union of the upper and lower provinces was effected, the company was still in active operation.

The connection between the company and the Upper Canada Government was close. The income derived from it was used in many quarters; £500 yearly for seven years went to the erection and maintenance of a preparatory school in connection with the provincial university; £1,000 annually went to the erection of the university buildings; Talbot's pension also was derived from the Canada Company funds. Its reaction upon the province has been variously estimated. Really it was both hurtful and beneficial to Upper Canada. When William Lyon Mackenzie was collecting evidence for the famous Seventh Report, he examined a number of persons having knowledge of the company's operations. A gentleman bearing the modest name of John Brown put the matter concretely: "The first settling of the country and opening the roads are advantageous; but the monopoly will eventually be disadvantageous."<sup>1</sup> Perhaps it was fortunate for Upper Canada that the company was allowed to operate when it did. Certainly colonization and road-building had been very bad; with Galt's arrival they improved. Probably the best thing it did for the province was to introduce settlers of the right sort. Yet it is to be noted that Talbot, with less effective financial backing and cruder business methods, accomplished more in proportion than did the Canada Company.

A large, elegant cursive signature of Thomas Talbot, written in dark ink. The signature is fluid and somewhat stylized, with the first letter 'T' being particularly large and prominent.A smaller, more compact cursive signature of John Galt, also in dark ink. It is less elaborate than Talbot's signature, with a more direct and somewhat angular style.

Facsimile of the signatures of Col. Thomas Talbot and John Galt.

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<sup>1</sup>Seventh Report, page 53, Section 337.



## CHAPTER IX.

### THE CLERGY RESERVES.

The difficulties created by the system of reserved lands were common to both provinces but were especially prominent in Upper Canada, where Lord Durham considered them to be "the most mischievous practical cause of dissension" existing. The history of the clergy reserves in that province sustains his verdict. The established Church of England attempted to monopolize them, other Protestant denominations contested the claim, and there ensued a most undignified struggle, extending over a period of twenty years. The motive was not confined merely to a desire for possession of the income which might be derived from their rental or sale, but included the supposed proof of ecclesiastical superiority implied in their control. Because the provincial administration was strongly Anglican and supported the claims of that church, while the ranks of the opposition were recruited largely from other churches, the question took a political turn and in time came to constitute a specific point of difference between the two parties.

The trouble originated in the vagueness of a phrase in the Canada Act. Sections 35 to 42 allotted for the support and maintenance of "a Protestant Clergy" as area equal to one-seventh of all lands which might thereafter be granted by the King for settlement, and gave authority for the erection of "parsonages or rectories according to the establishment of the Church of England," to be endowed out of the lands so allotted. As stated in Simcoe's proclamation, the reserves were not to be massed together but were to be intermingled with the unreserved land. In this arrangement lay the economic and chief source of trouble. Had they been grouped, even to the extent of the old Crown reserves under the regulations of 1789, their ill-effects might have been mitigated. It was because they presented an obstacle to agricultural and communal progress that the question became so engrossing to the public generally; it was a difficulty added by the Crown to the already great difficulties of the settler. On its religious side the quarrel was noisy but of lesser importance.

The prize, from a material standpoint, was worth contesting. Mention has been made of the error whereby one-sixth instead of one-seventh of the whole was reserved. The total amount involved was estimated at 2,395,687 acres, and at the time of Lord Durham's report the excess due to the error in survey was about 300,000 acres. In addition, reserves had been made with respect to lands granted prior to 1791, a proceeding not called for by the Act.

A minor religious difficulty cropped up almost immediately. One of the first statutes which the Provincial Parliament had to pass was a Marriage Act for the purpose of solemnizing marriages which, through lack of such provision in earlier years, really were illegal. Unfortunately the Act legalized only marriages performed by the Anglican clergy. Accordingly a petition was made against it, much to Simcoe's annoyance. "I have long foreseen this event . . . . It is obvious that the next claim of

the Dissenters will be a partition of the Sevenths set apart for the national Clergy."<sup>1</sup> What might have been only a minor disagreement capable of easy adjustment was intensified by the actions of various Anglican members of the official party, notably John Strachan, who later became the Bishop of Toronto. "To give efficiency to the Church Establishment is to strengthen the hands of Government,"<sup>2</sup> he claimed, and his political activities—he became an honorary member of the Executive Council in 1815—followed along the same line. Strachan believed the people of Upper Canada unfitted for self-government, and he was not sufficiently intelligent to realize that only through the educative experience of attempted self-government could come the requisite knowledge and capability. In his religious as in his political policy, though shrewd and capable, he was over-ambitious, violent, and extravagant in his claims, often prejudicing persons of judgment against the cause he advocated. Colborne even asserted that Strachan's political actions had destroyed his clerical influence.<sup>3</sup>

Simcoe was a strong supporter of the Established Church; he considered a bishop necessary to the welfare of Upper Canada, and offered £500 of his own salary to that end.<sup>4</sup> But he was sufficiently astute to realize the limits beyond which matters of church polity could not be forced. In October of 1793 Secretary Dundas informed him that until the clergy reserves could yield a proper income all lands in the province were to be subject to tithes, and instructed him to consult the Bishop of Quebec in the matter.<sup>5</sup> But Simcoe later advised the Secretary that tithes in Upper Canada would be neither useful to the clergy nor profitable to the people—"the experiment, I am persuaded, would be most dangerous."<sup>6</sup> Accordingly the scheme was abandoned, although that clause of the statute was not formally rescinded until 1823. Simcoe already had proposed a more practicable plan. Since the poverty of emigrants usually rendered impossible the public support of a clergy, it would be well for the Government to bestow on all resident clergymen a certain amount of landed property in perpetuity, at the same time placing the reserves in their care. Thus sons of respectable settlers might be induced to offer themselves for ordination, and "by these means the influence of the Protestant clergy may extend and increase with the rapid growth in value of those lands which are reserved for their maintenance, and which without a due attention being paid in this respect, will naturally be considered by the people at large as detrimental to the colony."<sup>7</sup>

The distribution of the Crown and clergy reserve lots according to the "chequered plan" of Surveyor-General Smith has been described,<sup>8</sup> together with the general system of leases and the changes in rentals. In the case

<sup>1</sup>To Portland, June 20, 1796. Q 282, II, page 480.

<sup>2</sup>To W. Horton. Q 338, II, page 452.

<sup>3</sup>"I wish to treat him with the greatest respect, and to prove that I am fully aware of his good intentions, his zeal for our church, and that the British government is grateful to him for his exertions, but I cannot blind myself so far as not to be convinced that the political part he has taken in Upper Canada destroys his clerical influence, and injures to a very great degree the interests of the Episcopal Church, and I am afraid of religion also." To the Bishop of Quebec, February 12, 1829, Q 351, I, page 106.

<sup>4</sup>Q 278, page 271.

<sup>5</sup>Q 279, I, page 251.

<sup>6</sup>Q 282, I, page 18.

<sup>7</sup>Q 279, I, page 169.

<sup>8</sup>Vide Chapter III.

of both Crown and clergy reserves there was failure to realize the amount of revenue anticipated. A practical illustration occurred in 1816 in connection with a recommendation by the Executive Council to pay Strachan some £350 on a claim for salary. It was to be taken out of the clergy reserves fund for Cornwall County, but it was found that the receipts from that entire district would not pay so much as the interest on the claim, which had to be transferred to the general fund of the clergy reserves in Upper Canada.

In 1816, as already related, the Upper Canada Parliament passed an Act "relative to the Right of Tithes," rescinding that clause of the Canada Act which provided for their collection. The Act was not ratified by the Home Parliament until 1819; the two years within which the Royal assent to bills must be given had elapsed, and it was necessary to prepare another and precisely similar bill. It was passed early in 1821 and was finally confirmed by order of the King-in-Council in September of 1822. In itself the Act was not important, but it defined the position of all incumbents of livings and cleared the air somewhat.

Meanwhile the popular opposition to reserves of every kind had been growing steadily. In 1817 the Assembly resolved itself into a Committee of the Whole to consider grievances. The ninth resolution formulated by this committee dealt with the injury caused by the Crown and clergy reserves; it was resolved "that the large tracts of Crown and clergy reserves are insurmountable obstacles to the forming well-connected settlements, which is an object of no small importance in a country where the opening and keeping roads in repair is attended with great expense and labour. Politically also . . . it holds out great inducements to future wars with the United States, by affording the means of partially indemnifying themselves, or rewarding their followers in the event of conquest." The eleventh resolution specifically named the clergy reserves: "that the reservation of one-seventh of the lands in the province for the maintenance of a Protestant clergy is an appropriation beyond all precedent lavish."<sup>1</sup> In addition to these resolutions there was a proposal to alienate one-half of the clergy reserves and devote the proceeds to secular purposes. Lieutenant Governor Gore prorogued the House before any action could be taken.

In 1819 there came a change in the management of the clergy reserves. Up to this time the Executive Council had been charged with their supervision, but it was claimed that the councillors displayed little interest in them and took no pains to secure the largest possible revenue from their leasing. Now, upon application by Bishop Mountain of Quebec, the management was assigned to a Clergy Corporation composed of the higher dignitaries and clergy of the Church of England in each province. The Corporation was one of management only, all monies received being paid over to the Receiver-General and by him applied to the use of the church. The Corporation merely arranged the details of leasing, collected rents and took measures for the prevention of trespassing. It was hoped that the new organization would bring increased returns, but the reverse appears to have happened. In 1820 the proceeds were about £260; in 1822 they had

<sup>1</sup>Assembly Journals, or see Gourlay's discussion, *Statistical Account of Upper Canada*, volume II, page 290-91.



diminished to a little over £150.<sup>1</sup> Undoubtedly factors other than this change of management were involved, but at least there seems to have been no noticeable improvement resulting from the more personal interest displayed by the clerical directors. In addition, the expenses of collection appear to have become greater, eventually to the extent of running the Corporation into debt.

Incidentally the formation of the Corporation aggravated the sectarian aspect of the trouble. It was seen that the clergy of the Church of England intended to press their claim to the whole of the reserves. They based this claim on the fact of their being the established Church of England, arguing that only to its members could the term "clergy" legally apply. The phrase "rectories, according to the establishment of the Church of England," was emphasized as proof of the Government's obvious intention in the matter. It was further claimed that when tithes were formally abolished the dominancy of the Church of England in Canada was inferentially recognized in the Act effecting it. The Church of Scotland claimed a share as having been legally established at the time of the Act of Union with England. The "Dissenters" claimed that there was no established church of any kind in Upper Canada, and that the term "Protestant Clergy" had been used in contradistinction to "Roman Catholic Clergy" without specifying any one branch of the Protestant body. They pointed out that in certain clauses of the Canada Act the term "incumbent or minister of the Church of England" had been used specifically, which would not have been the case had the Anglican clergy always been meant.

Early in 1819 some Presbyterians in Niagara had petitioned Maitland to grant their church £100 out of the reserves fund or from any other source available. Maitland was opposed to the claims of any but the Anglican clergy.<sup>2</sup> In transmitting the petition to Britain for instructions he pointed out the controversial nature of the request, and warned the Colonial Secretary that there was high feeling in the province on the question. Bathurst accordingly shelved it by claiming temporary lack of revenue.<sup>3</sup> But the movement continued; later on the Free Kirk, the Roman Catholics, Methodists and others all joined in the scramble.

In July of the same year Parliament exhibited some interest in the revenue side of the matter by requesting a statement of all clergy reserves leased up to the end of 1818. In November the law officers of the Crown in Britain decided that the provisions of the Canada Act having reference to the support and maintenance of a Protestant clergy might be extended to the Church of Scotland but not to dissenting ministers, as the term could apply only to Protestant clergy clearly recognized and established by law.<sup>4</sup> In communicating this decision to Maitland, Bathurst instructed him to make provision in each parish, first for the Church of England and then, in parishes where the Church of Scotland predominated, to furnish a proportionate allotment for a minister of that church.<sup>5</sup>

<sup>1</sup>Q 335, I, page 18. From petition of Church of England, 1823.

<sup>2</sup>To Bathurst. Q 325, I, page 212.

<sup>3</sup>Q 371A, page 107.

<sup>4</sup>Q 326, page 43.

<sup>5</sup>Q 319A, page 234.



At a meeting of the Executive Council in December of 1820 a petition from the Clergy Corporation was read, stating that many reserves were occupied by two persons and asking permission in such cases to divide the land into two lots of 100 acres each. After consultation it was decided that such land be divided into as many lots as there were unauthorized settlers upon it. A lease was to be made to each settler of the portion containing his improvements, and he was to pay the same rental as for an entire lot.<sup>1</sup>

In 1823, alarmed at the petition of the Church of Scotland for a share in the reserves, the Clergy Corporation asked the Home Government not to grant it. This counter-petition, signed by Strachan, is long and verbose, and in its argument is typical of the majority of such petitions from the Anglican side.<sup>2</sup> Parliament was divided on the subject, the Legislative Council and some members of the Assembly opposing participation in the reserves by any but the Anglicans. In the Assembly, William Morris, member for Lanark, championed the cause of the Presbyterians. But Strachan's most formidable opponent appears to have been Egerton Ryerson, leader of the Methodist body.

The sectarian bitterness aroused by the Anglican attempt at monopoly was aggravated at this juncture by the "Ecclesiastical Chart" which Strachan brought out in an attempt to prove the numerical superiority of the Anglicans over all other churches in Upper Canada. A later edition of this chart appeared in 1827. Meanwhile so many petitions concerning it had reached the Assembly that in 1828 a Select Committee was appointed to examine into the whole affair. The report of this Committee was most unfavourable to Strachan's design.<sup>3</sup> "From the evidence it will be seen that . . . the chart was calculated to produce, in many important respects, erroneous impressions respecting the religious state of the province and the sentiments of its inhabitants. As it seems from Dr. Strachan's evidence that it was drawn up suddenly from memory, and without the means of reference to sources of authentic information, it is much to be regretted that these circumstances were not hinted at . . . the more so when it is considered that, as he stated to the Committee, he had never known the number of members of the Church of England in this province." The report further stated that certain of Strachan's assertions as to the tendency of the population being "towards the Church of England" were completely contradicted by the evidence. As a matter of fact the Anglicans appear to have been in the minority at the time, and Strachan's statements to the contrary thus defeated the very purpose for which they were intended.

As has been noted, in 1824 the Clergy Corporation was instructed to cease renting reserves, because arrangements were being made to sell part of them to the Canada Company. In the same year Strachan, at the instance of the Lieutenant Governor, went to Britain to discuss various colonial matters with Secretary Bathurst. He had no difficulty in persuading the latter of the justice of the Anglican claim, and in conjunction with J. B. Robinson, who joined him as representative of the Anglican party, he secured the defeat of the proposal to sell the clergy reserves to the Canada Company. This year the Assembly nominated a committee

<sup>1</sup>Minutes of Council, State G, page 135.

<sup>2</sup>Given in Q 333, I, page 191.

<sup>3</sup>Appendix to the Journals of the Upper Canada Assembly for 1828.

to report upon the reserves dispute. The committee repudiated both the Anglican and Presbyterian claims and recommended division among the clergy of all denominations.

Strachan had evolved a very different plan, which he now offered to the Colonial Secretary, claiming it already had been approved by Maitland and the Bishop of Quebec. It was made out in the form of a bill to be enacted by the Upper Canada Legislature, giving to the Clergy Corporation full authority to sell such parts of the reserves as might be considered proper, though not over one-half the total amount in any one locality. The money so obtained was to be invested in the British funds and the dividends used for the maintenance of the Protestant clergy.<sup>1</sup>

In July of 1825 Maitland was instructed by Bathurst to set about the erection of parsonages or rectories in each parish in accordance with the provisions of the Canada Act, and the presentation of an incumbent to each. He asked the Executive Council to report on these instructions; the report suggested that the townships nine by twelve miles in area be divided into two parishes and the reserves into three equal parts, one to each parish for a parsonage endowment, and the remainder, about 3,200 acres, to remain in reserve until such time as it should be sold and the proceeds applied in the way outlined by Strachan. It was thought that at first there need be only one clergyman to two parishes.<sup>2</sup>

When the Assembly had sensed the possibility of a legal decision in Britain against sharing the reserves with the Church of Scotland, a petition had been sent asking that in such case some other provision be made for that body.<sup>3</sup> In 1826 Bathurst instructed Maitland to pay out of the funds derived from the Canada Company the sum of £750 yearly for the salaries of Presbyterian ministers, and a similar amount for Roman Catholic priests.<sup>4</sup> This provision was extended in course of time to various other sects. In that same year the Assembly found occasion to send still another petition on the reserves question to Britain. By the provisions of an Act passed by the Home Government in 1825, His Majesty had been empowered to order the appropriation of a further allotment of land in Upper Canada for clergy reserves in lieu of that already set apart and about to be sold to the Canada Company. The petition was a vigorous protest against any such action, with a rider to the effect that neither the reserves nor any funds arising from their sale be devoted to any but the general advancement of the Christian religion, with the alternative suggestion that such proceeds be applied to "purposes of education and the general improvement of this province."<sup>5</sup> In transmitting this petition Maitland observed that the Assembly appeared to have had this end in view even in supporting the claim of the Presbyterians. Ultimately the proposal for reserving additional lands was dropped.

The usual difficulties in enforcing lease terms cropped up, and in October of 1826 the Council ordered a proclamation to issue stating that all leases for which patents had not been completed would be cancelled unless such patents actually were taken from the Provincial Secretary's

<sup>1</sup>Q 337, II, page 455.

<sup>2</sup>G 61, page 230, both letter and report.

<sup>3</sup>Q 335, I, page 19.

<sup>4</sup>Q 371A, page 137.

<sup>5</sup>Q 371, page 33.

office by March of 1827 and all arrears of rent paid. A schedule of leases lodged in the Secretary's office would be sent to the sheriffs of the respective districts where the lands lay, with instructions to give notice of the proclamation by sending a copy to each lessee or tenant, or by posting conspicuously on the lot.<sup>1</sup>

The Imperial Parliament meantime was working on a plan for gradually disposing of the clergy reserves, in order to obtain a more settled revenue for clerical purposes. In July of 1827 an Act was passed authorizing the sale of a part of the clergy reserves in both Upper and Lower Canada.<sup>2</sup> In November Secretary Huskisson instructed Maitland to commence the sale. "The great object of the measure is to relieve the inhabitants from the difficulties which they have experienced in consequence of the wild lands reserved for the clergy remaining in an unimproved state in the immediate vicinity of improved tracts. . . . The obtaining an advantageous price, or the reservation to the clergy of tracts favourable for future settlement, are objects which, however important in themselves, must still be considered as subordinate to this first and principal design, and must, if necessary, be sacrificed to it."<sup>3</sup> But no township was to be wholly deprived of the reserves; three or four hundred acres in each was to be kept as a glebe. Sales in any one year were not to exceed 100,000 acres, nor was the total of sales at any time to exceed one-fourth of the whole. Peter Robinson, Commissioner of Crown Lands, was appointed to act as agent for sales. Terms of payment were outlined in a report by the Executive Council early in 1828.<sup>4</sup> They consisted of a ten per cent. cash deposit, with the balance in nine equal annual instalments at interest. Actual settlement was required in every case. Payment of arrears of rent on leased lots was made a condition precedent on all sales.

In pursuance of these instructions, Robinson sent out the prescribed notices of sale and soon was in receipt of numerous applications for purchase, especially from leaseholders. In six months he had proposals for over 100,000 acres,<sup>5</sup> and by the end of March in 1829 they totalled 200,000 acres. His report on the amount of clergy reserves set apart in the several districts up to the end of 1828 was, as follows:<sup>6</sup>

Eastern district	109,405 acres.
Ottawa	96,706 "
Johnstown	143,279 "
Bathurst	149,362 "
Midland	278,255 "
Newcastle	261,842 "
Home	328,915 "
Gore	265,313 "
Niagara	18,470 "
London	275,070 "
Western	144,678 "
Total	2,071,375 "

<sup>1</sup>Minutes of Council, Land M, page 666.

<sup>2</sup>Statutes of Upper Canada, 1791-1831, page 641.

<sup>3</sup>Q 371A, page 258.

<sup>4</sup>Minutes of Council, State H, page 441.

<sup>5</sup>Q 351, II, page 322.

<sup>6</sup>Q 353, II, last page.

His report on sales for the year 1829 was, as follows:

January 1 to March 31—8,575 acres for £6,681 cy.

April 1 to June 30—4,835 acres for £3,455 cy.

July 1 to December 31—4,604 acres for £3,093 cy.

—an average of 14s. 4¼d. per acre.<sup>1</sup> In 1831 Robinson paid in £8,000, the first remittance of proceeds from the sale of clergy reserves. Thereafter he was required to make remittances half-yearly. Sales continued to increase; in the first six months of 1832 some 22,805 acres were sold for £15,132 17s. 9d., an average of about 13 shillings per acre.<sup>2</sup>

So many petitions were received by the Assembly protesting against the Anglican monopoly of the reserves and the preference given to the Anglicans by the charter of the provincial university, that another committee was formed to report on both subjects. The report was printed early in 1828. In it Strachan's "chart" and the university charter were severely criticized, and it became clear that the mind of the Assembly as a whole was turning more and more to the plan of secularizing all the reserves and using the proceeds for educational purposes, mainly because of the impracticability of attempting to divide them among all denominations. In 1830 a bill for this purpose was passed by the Assembly, but was thrown out by the Legislative Council, where Anglican sentiment was strong. It proposed the appointment of commissioners in each district to superintend the sales and manage the proceeds. Each commissioner was to give £1,000 security; the Council pointed out that this amount was not sufficient, being the price merely of a few lots. Objection also was made to the lack of government control over sales and the fact that the Government would have to give patents free of charge. A final reason given by the Council for its action was the withdrawal of that financial aid to churches in Canada hitherto supplied by the Society for the Propagation of the Gospel in Foreign Parts, leaving the reserves as their sole source of support. It was argued that religious instruction might not with safety be left to the precarious liberality of individuals.

The strength of the provincial opposition to any scheme of an established church with territorial privileges had made itself felt in Britain, so that in 1831 Lord Goderich proposed the reversion of all clergy reserves to the Crown, should the Provincial Parliament so desire it. Colborne prorogued Parliament before an Act to that effect could be passed, and in the interim the Anglican party strongly protested the suggestion, so that eventually, after many petitions and counter-petitions, the instructions were withdrawn and Colborne was told to sell what quantity he should deem proper. But the significance of the incident lies in the tone of the Colonial Secretary's despatch. "His Majesty's Government," it reads, "have recommended the abandonment of the reserves for the simple reason that after an experience of forty years they have been found not to answer the expectations entertained at the time the system was established, but have entailed a heavy burden upon the province without producing any corresponding advantages."<sup>3</sup>

<sup>1</sup>Q 353, III, pages 374-380, and Q 355, page 198.

<sup>2</sup>Q 375, II, page 310.

<sup>3</sup>G 68, Goderich to Colborne, No. 55, November 21, 1831.



In this same year the question of an established church again was raised through Colborne's action in nominating an Anglican chaplain to the House of Assembly. Colborne, of course, was Anglican in sympathy. His policy at this time tended toward the satisfying of the Anglican claims, with a compromise as to the balance of the church lands and revenue such as might appease public opinion without too great a sacrifice of vested interests.<sup>1</sup> In 1832 he personally formulated such a compromise and proposed it to Goderich. It consisted simply in selecting five churches, other than the Anglican, and paying them grants out of the territorial revenue, leaving the Church of England in exclusive possession of the clergy reserves fund. The sums proposed, and later accepted, were £900 to the Church of Scotland, £700 to other Presbyterians, £900 to the Wesleyan Methodists, £900 to the Roman Catholics, and £600 to the Methodist Conference. Other churches also were to receive grants as soon as the funds grew sufficiently large for the purpose. Of course, in accepting these grants, the non-Anglican churches lost their most effective argument, that of voluntarism.<sup>2</sup>

When Robinson transmitted his first sales accounts he charged five per cent. commission in lieu of salary. The Executive Council objected to the amount, and recommended that in future he be paid a yearly salary of £500 cy. When the Lieutenant Governor asked why a salary had not sooner been arranged, the Council pointed out that these were the first accounts rendered, and that the Lieutenant Governor had not himself referred to them the matter of salary. About the same time the matter of arrears in payments on sales came up. Two methods for its settlement were proposed; Commissioners might be appointed in each district to ascertain the intentions of lessees and report the same, or the lots in arrear might be advertised for sale, allowing a reasonable period within which the monies due could be paid. After deliberation it was decided to recommend the first method, because, though more expensive, it would be "more efficacious." But further action became imperative in the succeeding year, and the Council reported it advisable to select in each district the principal defaulters and issue a commission of office to declare their lots vacant. It was further recommended that the agent for the sale of clergy reserves no longer be authorized to sell any of those already under lease, or to alienate more than one-fourth of the total reserve in any township, and that in new townships none be sold under ten shillings per acre.<sup>3</sup>

In 1834 came the formation at York of the Canadian Alliance Society, having as one of its avowed objects the secularization of the clergy reserves. Of this society William Lyon Mackenzie was a leading member. Already Colborne had come to realize the futility of attempting to settle the question amicably. In a letter to the Colonial Under Secretary he declared no satisfactory arrangement could be concluded within the province; "It appears a subject fit only for the legislation of the Imperial Parliament, under whose Acts the reserves were first set apart."<sup>4</sup> Mackenzie's "Seventh Report on Grievances" served to keep the quarrel in the public eye. It recorded, for instance, the fact that from 1787 to 1833 some 22,345 acres

<sup>1</sup>Bethune, "Life of Strachan," page 131.

<sup>2</sup>See in this connection Lindsey's "Clergy Reserves," pages 24-25.

<sup>3</sup>Minutes of Council, State J, page 267.

<sup>4</sup>To Hay, January 14, 1833. Q 377, I, page 51.

of the lands set apart as glebes were assigned to Church of England clergy, 1,160 to the Kirk of Scotland, 400 to Roman Catholics, and none at all to other denominations.<sup>1</sup> Nor was the attitude exhibited by many of the Anglican party when giving evidence before Mackenzie's Committee likely to make the situation easier. Strachan himself underwent an inquisition: "The Government of Upper Canada does not confine itself to maintaining one form of the Christian religion; it selects four particular denominations, and within the last two years appears to have paid them about £35,000, while the other sects received no part of the public monies. Do you think this was a just course?" To which Strachan, with native prudence, replied: "The Government does so little in support of the Christian religion, that I am thankful they do this much."<sup>2</sup>

In 1831 the Assembly had asked the Imperial Government to legislate in the matter of the reserves, but no action resulted. In 1835 the Legislative Council preferred a similar request, intimating that—of course—the Anglican church should remain established. Glenelg acknowledged the address, but declined to recommend to Parliament the course of action solicited unless both Assembly and Council agreed upon it, after every prospect of other adjustment had been exhausted. Meantime Colborne had further developed his views. Writing to the Earl of Aberdeen in March of this year, he expressed himself as confident that the reserves could be disposed of satisfactorily only "by an Act being passed for the resumption of them by the Crown."<sup>3</sup>

One of Colborne's last acts as Lieutenant Governor of Upper Canada was to call into operation those sections of the Canada Act authorizing the erection and endowment of rectories, by using clergy reserves to endow forty-four Anglican rectories. The immediate result was a tremendous outcry from the other Protestant churches. Colborne defended himself by resting the responsibility on the Colonial Secretary, who, in April of 1832, had written him intimating the desirability of commencing "this salutary work"<sup>4</sup> As has been noted, Bathurst in 1825 had instructed Maitland to the same effect. Colborne was encouraged in his action by a recommendation from the Executive Council that no time be lost. An extract from Goderich's despatch was entered in the minutes of Council as authority for this action.<sup>5</sup> It had been intended to endow fifty-seven rectories, but only the documents for forty-four were completed when Colborne had to sail. Over 17,000 acres of land were involved.

So great was the opposition aroused by these endowments that the question of their legality was referred to the law officers of the Crown in Britain. After an adverse decision in June of 1837, they were finally pronounced legal in January of 1838. But it was pointed out that the authority given for the measure was insufficient.<sup>6</sup> The attitude of the Home Government was decidedly critical. Secretary Glenelg hastened to warn Lieutenant Governor Head not to repeat the mistake. "I regret

<sup>1</sup>Seventh Report, Document 51, page 64.

<sup>2</sup>Ibid, Section 559, page 87.

<sup>3</sup>Q 385, I, page 65.

<sup>4</sup>See Kingford's discussion of this point.—History of Canada, vol. 10, page 335. For other views see Lindsey, "Clergy Reserves," page 35, and Dent, "Upper Canada Rebellion," vol. 1, page 293.

<sup>5</sup>Minutes of Council, Land R, page 240. Also State J, page 343.

<sup>6</sup>Q 406, II, page 538.

that it did not occur to Sir John Colborne to communicate to me his decision to establish these rectories before it was carried into execution. If I had been aware that such a purpose was entertained, I should have felt myself bound to advise His Majesty to withhold his sanction to that measure."<sup>1</sup> He described the despatch used by Colborne and the Executive Council as constituting no real authority whatever, and ordered further proceedings with reference to the incompletd rectories to be stayed, while no more endowments were to be made "without the most explicit authority from the King." Again, in a letter to Lieutenant Governor Arthur in December of 1837, he referred to the 1836 endowments as having taken place "without the previous concurrence or knowledge of the present ministers of the Crown," but under a "presumed" authority from the Secretary of State.<sup>2</sup>

In the 1836 session of Parliament the Assembly passed a motion recommending that the money arising from the sale of clergy reserves be applied to the religious and moral instruction of the people. A later amendment specified general education as the best means of effecting that end. But the amendment was lost and the original motion came to nothing. Meanwhile the sales went merrily on. In April of this year the Commissioner of Crown Lands had presented a report to the Lieutenant Governor advising that the Imperial Parliament bring in a bill authorizing the sale of at least another fourth of the clergy reserves in Upper Canada, and that the whole of the proceeds, instead of remaining invested in the British funds as formerly, be invested in government debentures within the province. Thus the income would be increased and the investment would benefit the colony.<sup>3</sup> It was about this time that the Colonial Secretary directed that all sales of lands belonging to the Crown be for cash only. After deliberation, the Council decided that the order included clergy reserves.<sup>4</sup>

After Mackenzie's rebellion the Home Government began to consider means of modifying some of the grievances which had fostered it, the clergy reserves among others. Late in 1837 Secretary Glenelg drew Arthur's attention to a despatch which already had been sent to Head on the subject, though without effect. In it he had suggested the adoption in Upper Canada of the system already installed in the Australian colonies. Its general principle was the regulation of State contributions toward the support of the different communions according to the extent of the voluntary efforts made by each.<sup>5</sup> Such a plan had succeeded well in New South Wales. But no action appears to have been taken by Arthur, and in the summer of 1838 Glenelg reminded him that the Colonial Secretary some years previously had proposed the reversion in the Crown of the entire body of clergy reserves. Arthur replied to the hint by stating his intention of introducing a bill of that nature in the coming parliament.<sup>6</sup> At its opening this matter of clergy reserves was stressed in the speech from the throne, and a committee later was nominated to deal with it.

<sup>1</sup>Q 396, I, page 22.

<sup>2</sup>G 83, page 253. December 26, 1837.

<sup>3</sup>Q 396, IV, page 576.

<sup>4</sup>Minutes of Council, Land S, page 576.

<sup>5</sup>G 83, page 253.

<sup>6</sup>Q 406, II, page 60.



The recommendations of this committee are fairly typical of their kind.<sup>1</sup> It was proposed that all the reserves be sold, that the monies be invested in provincial debentures (thus including Robinson's scheme), and that the proceeds be appropriated exclusively to religious purposes. The scheme for division was as follows: not over one-fourth to the Church of England, not over one-fourth to the Church of Scotland, and the balance to be divided among such bodies as the Lieutenant Governor should approve. After much discussion it was rejected, to be succeeded by a resolution calling for a division of the reserves among the Church of England, Church of Scotland and Wesleyan Methodists. In addition to these recommendations a private member independently introduced a bill to re-invest the reserves in the Crown, thus fulfilling Arthur's promise to the Home Government.

Finally a measure was framed and passed. It proposed that the whole of the clergy reserves be sold in the same manner as other Crown Lands within the province, all monies arising therefrom to be paid to the Receiver-General and applied, through some Imperial Agency, to religious purposes.<sup>2</sup> It was passed by a majority of only one vote, after a long series of hot debates on the various resolutions and reports which had preceded it. In accordance with the procedure for provincial measures which affected the clergy reserves, it was reserved for Her Majesty's pleasure. Assent was withheld, technically because it was deemed improper for a subordinate body to delegate powers of legislation to the Imperial Government.<sup>3</sup>

Lord Durham later recommended that the Home Government repeal all its Acts in this connection and allow the provincial legislatures themselves to settle the matter, but no action was taken. Thus it happened that when in 1840 Upper Canada was joined to the lower province this contentious matter of the clergy reserves still remained unsettled. But it may be noted that sales had continued steadily, as exemplified in the following table.<sup>4</sup>

1828.....	Agent for sales began duties April 1.
1829.....	18,014 acres sold for £13,229
1830.....	34,705 " " £23,452
1831.....	28,563 " " £17,362
1832.....	48,484 " " £32,287
1833.....	62,282 " " £44,747
1834.....	59,526 " " £41,376
1835.....	59,003 " " £40,973
1836.....	63,440 " " £40,985
1837.....	81,549 " " £52,253

Thus by 1836 some 368,420 acres had been sold for a sum of £250,655, an average price of 13s. 7d. per acre. By 1839 the authorized one-fourth of the total reserves was nearly gone. In addition to the cash returns there must be taken into account the interest and also the income from rentals not yet expired. Of course the returns from the latter source were not large.<sup>5</sup>

1836 .....	£2,379
1837 .....	£1,998
1838 .....	£1,078
1839 .....	£2,879

<sup>1</sup>Q 415, II, page 351.

<sup>2</sup>Q 416, II, pages 280 and 319.

<sup>3</sup>Q 417, II, page 379.

<sup>4</sup>Q 408, I, page 39. Fractions not given.

<sup>5</sup>Report of 1840—Office of the Secretary of the Clergy Corporation.



The total rents in arrear in 1840 were £29,965; the total number of acres under lease was 311,600.

The final act of secularization in 1854, by which these much disputed lands were handed over to the municipal corporations for secular purposes, is beyond the scope of this study. Had settlement of the quarrel been left to the clergy it is difficult to estimate the trouble which would have resulted. Fortunately competent judges like Durham perceived the economic significance of the reserves in relation to the progress or retardation of settlement, and eventually there came State action. In a day of State churches and under pioneer conditions, it was natural that the clergy should expect governmental aid and quarrel over its distribution. The error of the Established Church, which paralleled that of the official executive body of the time, lay in not perceiving the growth of that democratic spirit with which the theory of a State church was wholly incompatible. Incidentally, the controversial literature evoked by the struggle was surprising in both its quantity and violence. It may not be unfitting to conclude with a description of the reserves as given by one hyperbolic critic: "Like rocks in the ocean they glare in the forest, unproductive themselves, and a beacon of evil to all who approach them."<sup>1</sup>



Facsimile of signatures of Bishop Strachan, Toronto, and Rev. Dr. Egerton Ryerson, Toronto.

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<sup>1</sup>Quoted in the Introduction to Gourlay's "Statistical Account of Upper Canada," page 306.

## CHAPTER X

### INDIAN LANDS.

The British Government always has recognized the title of the Indian tribes of Canada to the lands which they occupied. Hence the history of the Crown lands of Upper Canada properly begins with the transfer of the Indian lands to British ownership. But detailed records of the various treaties and surrenders by which the transfer took place are not always available, for the Crown Lands Officials had little to do with Indian lands in the beginning. That business was carried on by a military "Indian Department;" scarcely a record or account book was used, the Deputy Paymaster was the only public accountant for monies, and there was not even a permanent clerk for correspondence.

When Canada became British almost all of what is now Ontario still was in Indian hands, La Salle's grant of land at Cataraqui being a notable exception. In the proclamation of 1763 which followed the Treaty of Paris, defining boundaries and government, considerable space was given to the policy with respect to Indian possessions:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserves to them, or any of them, as their Hunting Grounds.—We do, therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretense whatever, to grant Warrants of Survey, or pass any Patents for lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, I reserve to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

And We do hereby strictly forbid on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our special leave and License for that Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; in order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and

determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose; And we do, by the Advice of our Privy Council, declare and enjoin that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to trade with the said Indians do take out a License for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any time think fit by ourselves or by our Commissaries to be appointed for this purpose to direct and appoint for the Benefit of the said Trade;

And we hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well as those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licenses without Fee or Reward, taking especial Care to insert therein a Condition, that such License shall be void, and the Security forfeited in case the Person to whom the same was granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.<sup>1</sup>

The Instructions to Governor Carleton in 1775 further stress this attitude toward the Indians. Section 43 of the Instructions sets forth the method to be followed in purchasing their lands:

That no purchases of Lands belonging to the Indians, whether in the Name and for the Use of the Crown, or in the Name and for the Use of proprietaries of Colonies be made but at some general Meeting, at which the principal chiefs of each Tribe, claiming a property in such Lands, are present; and all Tracts, so purchased, shall be regularly surveyed by a Sworn Surveyor in the presence and with the Assistance of a person deputed by the Indians to attend such Survey; and the said Surveyor shall make an accurate Map of such Tract, describing the Limits, which Map shall be entered upon Record, with the Deed of Conveyance from the Indians.<sup>2</sup>

Again in 1787, in the Instructions to Sir John Johnson for the good government of the Indian Department, the following is found:

No person belonging to or employed in the Indian Department is to be permitted to trade directly or indirectly, or to have any share, profit or concern therein.<sup>3</sup>

In 1764, by treaty through Sir <sup>William</sup> Johnson, a tract of land fourteen by four miles in area on both sides of the Niagara River was acquired from the Mississaugas.<sup>4</sup> This constituted probably the first permanent surrender into British hands of Indian lands in Upper Canada. Johnson was the first official representative of an Indian Department in British North America. He had superintended a settlement in the Mohawk Valley of New York State; the Mohawks adopted him and elected him a sachem. In 1744, because of his great influence over the Indians, he was appointed superintendent of the affairs of the Six Nations. As a reward for his

<sup>1</sup>Ontario Archives, 1906, page 4.

<sup>2</sup>Ontario Archives, 1906, page 78.

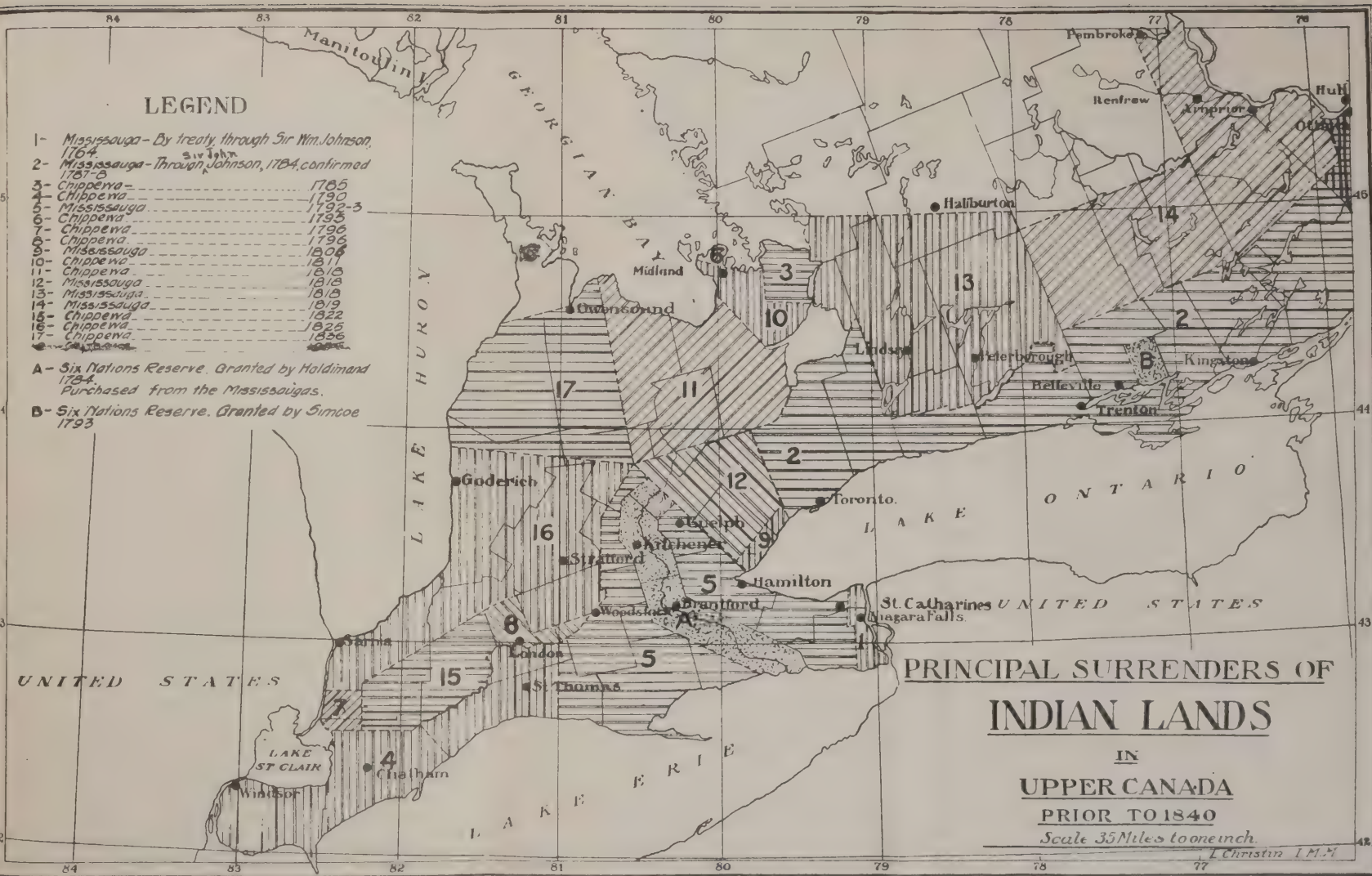
<sup>3</sup>Simeoe Papers, Book 2, page 148.

<sup>4</sup>The word has a variety of spellings. The Fourteenth Report of the Geographic Board of Canada gives the spelling "Mississagua" as applied to a lake of that name, while the Handbook of Indians of Canada (Appendix to Tenth Report), gives the spelling "Mississauga" as applied to the Indian tribe.



# LEGEND

- 1- Mississauga- By treaty through Sir Wm. Johnson, 1764.
  - 2- Mississauga- Through Johnson, 1784, confirmed 1785.
  - 3- Chippewa- 1785
  - 4- Chippewa- 1790
  - 5- Mississauga- 1792-3
  - 6- Chippewa- 1795
  - 7- Chippewa- 1796
  - 8- Chippewa- 1798
  - 9- Mississauga- 1804
  - 10- Chippewa- 1811
  - 11- Chippewa- 1813
  - 12- Mississauga- 1813
  - 13- Mississauga- 1813
  - 14- Mississauga- 1819
  - 15- Chippewa- 1822
  - 16- Chippewa- 1825
  - 17- Chippewa- 1836
- A- Six Nations Reserve. Granted by Haldimand 1784.  
Purchased from the Mississaugas.
- B- Six Nations Reserve. Granted by Simcoe 1793



## PRINCIPAL SURRENDERS OF INDIAN LANDS

IN  
UPPER CANADA

PRIOR TO 1840

Scale 35 Miles to one inch.

J. Christian I.M.M.





military services against the French he was granted a tract of 100,000 acres north of the Mohawk River, on the site of the present Johnstown, where he lived in all the style of an English baron. Colonel Guy Johnson succeeded to his official position with the Indians, until in 1782 he was suspended because of irregularities in the conduct of the office. Upon reorganization Sir John Johnson, son of Sir William Johnson, was appointed Superintendent-General and Inspector-General of Indian Affairs, under the orders of the Commander-in-Chief of His Majesty's Forces. A small body of local agents, interpreters and clerks completed the personnel of the department. Until Sir John's death in 1830 it adhered closely to the Johnson tradition.

About 1785 a considerable area along the shore of Lake Ontario was purchased from the Mississaugas, and by 1791 townships had been laid out and settlement begun. Further land along Lake Erie was bought from the Chippewas in 1790.<sup>1</sup> A purchase of a different nature was made by Governor Haldimand in 1784. The powerful Six Nations had been driven out of their territories during the Revolutionary War; as allies of Britain they were entitled to some recompense. Haldimand accordingly purchased from the Mississaugas a fertile tract extending up the Grand River, from its mouth to what was then accounted its source, and presented it to the Six Nations as a permanent reserve upon which they might make their home.<sup>2</sup> On a part of this same reserve the same tribe still resides.

Curiously enough, this grant was to give more trouble to the provincial officers than any other part of the Indian surrenders. The first difficulty arose in determining its boundaries. A patent, made out by Simcoe, but never registered, limited the tract to the Mississauga purchase.<sup>3</sup> But this purchase did not extend quite to the source of the river. The lands about the source were purchased separately in 1818 and laid out for settlers; the Six Nations complained, claiming an infringement of their treaty rights. Eventually they relinquished the claim, upon condition of receiving a grant in fee simple of all the undisputed territory, a condition with which the Home Government readily complied.<sup>4</sup> In 1793 a much smaller reserve on the Bay of Quinté, also was set aside for them by Simcoe, and a grant was executed in due course.<sup>5</sup>

Control of the Indian Department became a point of some difference between Governor and Lieutenant Governor. As Simcoe put it, in referring to the Commander-in-Chief at Quebec—"no man at nine hundred miles distance can possibly pretend to foresee the transactions which may or may not render it necessary for those upon the spot to suspend general orders on particular emergencies."<sup>6</sup> Dorchester, on the other hand, complained that his immediate authority would be superseded were control of the department in Upper Canada to be vested in the Lieutenant Governor of that province. The point was only part of the greater quarrel between the two executives, in which, as noted elsewhere, the Lieutenant Governor usually got what he wanted, but control of the Indian Department in

<sup>1</sup>See accompanying map for approximate boundaries and dates. A further list of surrenders may be found in volume IV, of "Canada and its Provinces," page 718.

<sup>2</sup>For particulars of this grant see Can. Arch., 1896. Note A.

<sup>3</sup>Minutes of Council, Land and State A, page 49.

<sup>4</sup>Q 337A, page 77. 1822.

<sup>5</sup>Minutes of Council, Land and State A, page 65.

<sup>6</sup>Q 280, II, page 440. To Dundas.

Upper Canada was not included. Perhaps it was as well that the Home Government thus largely retained control of the Indian land affairs, for it alone was free of local prejudice.

In 1794 there were still thirty-six miles of Indian lands between York and Burlington Bay.<sup>1</sup> In this year a Deputy Superintendent General was appointed, in the person of Colonel Alexander McKee. Later in the same year additional instructions were issued to the department,<sup>2</sup> covering method of purchase of land from the Indians. No lands were to be bought save by the Superintendent-General or his deputy or a person specially commissioned by the Commander-in-Chief. When Indian land was wanted, the person administering the government of the province was to make a requisition to the Commander and also the Superintendent, with a sketch of the tract in view; the latter would then find out the price required, "in goods the manufacture of Great Britain," which were to be brought out as soon as possible. All purchases were to be made in public council with great solemnity and in the Indian style, all the chiefs and leaders interested being assembled for the purpose. Either the Governor of the province or two persons commissioned by him were to be present, while the Superintendent making the purchase was to be accompanied by two other persons of the Indian Department, and from one to three or more military officers from the nearest garrison, according to its strength. Proper interpreters were to be employed. No strong liquors were to be allowed and the Indians were to be kept sober. After explaining in full to the Indians the nature and extent of the bargain, regular deeds of conveyance (original, duplicate and triplicate) were to be executed in public council by the principal chiefs and leading men on the part of the Indians, and by the Superintendent and his assistants on the part of the Government, and were to be attested by the Governor or his deputies, together with the officers and others present. Descriptive plans, signed and witnessed in the same manner, were to be attached. One of these full conveyances was to be sent to the office of the Superintendent-General, one to the Governor, and one was to be retained by the Indians. All other matters being settled, the goods agreed upon were to be given to the Indians in public council, with as much notoriety as possible. Their delivery was to be certified and witnessed in the same way as the deeds of conveyance.

In 1796 President Russell found himself in a quandary over the Six Nations' lands on the Grand River. Further cessions of Indian territory on both sides of the reserve in 1792-3 had opened a large area to settlement; covetous eyes were cast on the rich lands of the Grand River, and the Six Nations received many offers of purchase. Their leader at this time was the famous Joseph Brant, protégé of Sir William Johnson and later Secretary to Colonel Guy Johnson. Brant now made official application to the Attorney-General for deeds to certain persons from the United States, to whom, as representative of his tribe, he wished to sell considerable tracts on the Grand River. Russell did not know what attitude Simcoe had taken in these matters, but he surmised that the Home Government would be opposed to any alienation of the reserves lands, and in any case he did not wish to have in Upper Canada an influential body

<sup>1</sup>Simcoe Papers, Book 9, page 697.

<sup>2</sup>Q 281, II, page 286.

of aliens in the persons of the intending purchasers. All he could do, by his own confession, was to lament his "total want of instructions," and with the advice of the Executive Council, to try to evade signing the required deeds, at least, until such time as he could receive instructions from the Secretary for the Colonies.<sup>1</sup> Afraid of censure from his superiors in office, but also afraid of an Indian and possibly an American war, Russell truly was between the devil and the deep sea.

As a matter of fact, the deed offered to the Six Nations by Simcoe precluded the selling or even leasing of the lands, "it being obvious that letting of them would, equally as selling of them, obviate the intent of His Majesty's Government in making a permanent provision for the maintenance of the Indians, and leave them at the mercy of land jobbers."<sup>2</sup> Brant had rejected it; he wanted to lease the land, ostensibly because it no longer was useful for hunting, while the Indians as yet were unused to agriculture. Simcoe then had applied to Dorchester for instructions; the latter arranged a deed whereby selling or leasing would be permitted without exception, provided an offer of the land was first made to the King. This deed also was refused. The principle on which the Six Nations based their action in both cases was that they were allies and not subjects of Britain.<sup>3</sup> Finally, as Brant continued importunate, the Attorney-General had suggested that the Six Nations surrender all title to the lands they then possessed, whereupon the Government would grant patents in the usual way to whatever persons they might indicate. The Lieutenant Governor and also the Six Nations had acquiesced in this arrangement and Brant now wished to act upon it. The object of the Six Nations in alienating part of their land was the desire for an annuity by which their future support might be assured. The lands granted them soon would cease to fulfil that function to them as Indians, because of the rapid increase of population in the districts surrounding them.

It now appeared, to Russell's evident relief, that the persons who wished to purchase the lands were not Americans but loyal subjects. Brant again pressed the matter, but as Russell feared to act before hearing from England he informed Brant that he could not deal with so important a matter without first consulting the Executive Council, and requested him to put in writing the names of the persons and the quantities of land involved. Brant complied, and at the same time obtained from the Indian chiefs a power of attorney to act for them. This document was signed by thirty-five chiefs.<sup>4</sup> Russell now decided that because of the lateness of the season a council could not be called before spring; he hoped in this way to delay matters until instructions came. Impatient at this fresh obstacle, the Six Nations themselves concluded bargains for part of the lands, and Brant in a formal speech informed the administration that it had trifled so often with the Indians as to cause them to lose all confidence in it.

Russell still hesitated between danger from the Indians and injury to the dignity of the State. "Conscious that it might be impolitic in the

<sup>1</sup>Q 282, II, page 583. To Simcoe.

<sup>2</sup>Simcoe Papers, Book 6, page 261.

<sup>3</sup>The principle is still (1920) maintained. In the war with Germany conscription was not applied in the case of the Six Nations because of it.

<sup>4</sup>For a copy see Q 283, page 35.



present weak state of this province to provoke insult even from an Indian tribe, even though fully sensible of the propriety of supporting the dignity of the Government," he addressed Brant "with great mildness," reproving him for not waiting.<sup>1</sup> Brant in reply said that the patience of the Six Nations was exhausted, that Simcoe had promised deeds in confirmation of their sales, and that Russell must have received instructions to that effect. Nothing developed, and Russell suddenly discovered that as the Indians refused to allow any clergy reserves to be deducted from the lands sold he could not give legal deeds in any case. It may be noted that this difficulty later was disposed of by appropriating Crown lands in the vicinity of the Six Nations' sales, to be described as reserves in the usual way.<sup>2</sup>

Secretary Portland, in reply to Russell's repeated requests for instructions, informed him that Simcoe had left England for San Domingo, and hence he lacked proper information on the subject. But as it was clear that the original grant of the Grand River tract gave the Six Nations absolutely no power of transfer and alienation, he suggested that the dilemma was the result of foresight on the part of Haldimand. He requested information as to the amount of annuity desired by the Six Nations, in order that the Government might take steps toward giving them the requisite sum in lieu of the lands. In another despatch he pointed out that in December of 1796 Additional Instructions had placed the control of the Indian Department in Upper Canada directly under the Lieutenant Governor subject to any orders from the Governor General,<sup>3</sup> and hence Russell for the moment was wholly responsible for its conduct. Unfortunately, before these letters arrived Russell was forced to call a meeting of Council; rumours of war and of an attack by the French and Spanish made him place a higher value on an Indian alliance, and it was unanimously decided that the Six Nations be granted their request.<sup>4</sup> Brant was notified, and was also informed that it would be necessary for him to take the prescribed oaths and pay the customary fees. He objected to both requirements, and while disputing over them the letters from Portland arrived.

Russell now conceived that he no longer had power to confirm any alienation, so he again summoned the Executive Council and asked them, firstly, whether Brant's dissatisfaction with the offer did not release the Government from all promises made concerning alienation of the lands, and secondly, whether Portland's letter did not take the business entirely out of his hands. The Council, perhaps not without a touch of malicious amusement, unanimously answered in the negative, urged him to fulfil his promises, and added insult to injury by expressing a desire that measures for the defence of the province at once be taken.<sup>5</sup> The President was most anxious. "I cannot but feel the unhappy situation in which these gentlemen have placed me," he informed Portland, "exposed to every consequence from a disobedience of my Royal Master's commands, or to the odium and responsibility of any subsequent Indian war."<sup>6</sup> Eventually he determined not to follow the advice of the Council to its full

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<sup>1</sup>Q 283, page 57.

<sup>2</sup>Minutes of Council, Land B, page 1.

<sup>3</sup>Constitutional Documents, 1791-1818, page 189.

<sup>4</sup>Minutes of Council, State B, page 46.

<sup>5</sup>Ibid, page 50.

<sup>6</sup>Ibid 21, 1797,—Q 283, page 153.

extent. First of all he summoned Brant and tried to arrange for an annuity as instructed by Portland. But Brant declared that nothing short of confirmation of the sales would now placate him. So Russell agreed to confirm what lands had been sold—three whole townships and part of two others, 381,480 acres in all—if the Six Nations first would relinquish their claims upon these, if the purchasers would take the prescribed oaths of loyalty, and if no other lands would be alienated without special arrangement with the Government. Brant withdrew satisfied, and the Six Nations secured by this sale an annuity of about £5,000. They appointed three trustees, one of whom was Surveyor-General D. W. Smith, to receive for their use the mortgages and other securities for payment.

Portland's comment upon receiving an account of the whole transaction was that it was all very regrettable, and that the necessity of giving way to the Six Nations could have arisen only from not pursuing a proper line of conduct towards them.<sup>1</sup> Here a factor in the attitude of the Six Nations should be noted. In 1797 Berczy, with Simcoe's approval, had treated with them for part of their lands. The price not suiting him, the deal fell through. But Brant knew that this purchase, which would be paid for by foreigners and used for the settlement of aliens, was favoured by the King's representative. Probably this led him to suppose that the Indians at any time could sell to the highest bidder. But the Government, as has been related, decided to retain the right of passing upon all future transfers, and even in allowing this one the lands first were turned back to the King. This principle governed all subsequent transactions in Indian lands.

Of the entire frontage on Lakes Erie and Ontario, only one small tract of some 85,000 acres now remained in Indian hands.<sup>2</sup> This tract, lying roughly between what are now the cities of Toronto and Hamilton, separated western Upper Canada from the seat of Government at York. Hence in 1797 a special effort was made to secure it. But the Mississaugas demanded 3s. 4d. per acre, and the Government delayed action. In August of 1804 Hunter definitely ordered the Deputy Superintendent to purchase it; a provisional agreement was made out, but Hunter died before a final settlement was reached. President Grant did not feel free to act without further instructions; £1,000 had been the original price agreed upon, but he recommended £1,700 as more closely approximating the wishes of the Indians. It was later found that the original plan as exhibited in the provisional agreement of 1805 was defective, over 10,000 acres not being shown on it.<sup>3</sup> The Executive Council was much concerned over this error, more especially as the Indians had complained about it, and the Surveyor-General was ordered to make a special survey of the whole territory. This was done, and the purchase was completed in September of 1806.

A series of cessions of the territory back of the waterfront occurred as increase of immigration led to a demand for new lands for settlement. Often provisional surrenders were made first, followed later by a confirma-

<sup>1</sup>Q 278A, page 124. Minutes of Council of the surrender are in State B, page 102. Copy of instrument,—Q 284, pages 82-85. Copy of deed to be issued, *ibid.*, pages 88-94.

<sup>2</sup>See the tract numbered 9, on accompanying map.

<sup>3</sup>Q 305, page 43.

tory agreement. Sometimes cash was paid, sometimes an annuity. Thus the price for the Mississauga lands just described was £1,700 cash, whereas the price for a portion of Dufferin, Grey and Simcoe Counties, purchased in 1818, was an annuity of £1,200. In the case of a few very early cessions, only the protection of His Majesty was asked. Occasionally a free grant was made; thus Claus, for thirty years trustee to the Six Nations, received from them a gift of 15,360 acres in Haldimand County. The annuity received for a cession might be desired in the form of goods "at the Montreal price." Where improvements had been effected by individual Indians of a tribe, the terms of surrender might include reasonable compensation in money for these. Sometimes payment was a combination of annuity and ready cash, though annuities were preferred by the Government as affording a more permanent means of existence to so improvident a people. Occasionally sales of timber would be made without affecting the ownership of the land. In later years there were also sales of right-of-way to railroad companies. In these various ways the frontier gradually receded, until in 1840 practically the whole of "old" Ontario had been given over to settlement. As settlement progressed, it became necessary to reserve certain portions of the land for permanent Indian residence, and to this end tracts of various sizes were set aside as Indian reserves. Such reserves were placed in the care of trustees, who often were Government officials or clergymen or else private citizens of more than ordinary standing in the community. An example was the Otonabee Township Reserve of 1,120 acres, placed in the charge of Reverend Scott, Reverend Bethune, Charles Anderson, Charles Rubidge and the Honourable George Markland. Many of these reserves are still in use. It may be noted that on all such reserves, as in the case of ordinary Crown lands, gold, silver and white pine were reserved to the Crown.

Lack of precise records in connection with some of the earlier surrenders occasionally led to confusion and apprehension. Thus in 1798 the chief executive officers of Upper Canada were greatly perturbed over certain charges against the validity of an early purchase which included the town of York itself. Fortunately Sir John Johnson was able to reassure them.<sup>1</sup> One result, however, was the issuance of an order that all records and papers relative to lands purchased from the Indians be kept on file in the Council Office.<sup>2</sup>

It is interesting to note that in May of 1799 the Mississaugas offered to sell 69,120 acres to Puisaye and his followers at 1s. 3d. (Halifax) per acre. The offer was refused, both because it was considered too high a price, and hence bad for future business, and because it would give the Indians a further precedent for dealing with whom they pleased.<sup>3</sup> The motives behind government purchase in the early days of the province were not always the need for settlement lands or the demands of the Indians themselves; occasionally they were military in character. A good example is the purchase of Penetanguishene in 1795. It was intended as a substitute for Michilimackinack, should that post be lost to the British in the negotiations with the United States.<sup>4</sup>

<sup>1</sup>Smith Papers, B5, pages 163-166. Also Simcoe Papers, vol. 9, page 546.

<sup>2</sup>Minutes of Council, State B, page 155.

<sup>3</sup>Ibid, page 374.

<sup>4</sup>Simcoe Papers, Book 9, page 662.



In January of 1799 Deputy Superintendent McKee died. A dispute over the patronage took place between the civil and military powers. The Duke of Kent, claiming it was a military appointment, named Colonel John Connolly as McKee's successor. Lieutenant Governor Hunter, on the other hand, named Captain William Claus, an experienced agent. Eventually the Duke gave up his claim; Claus was appointed and served up to the time of his death in 1826. Even at this early date attempts to lease lands from the Indians without authority appear to have been not uncommon, and in 1802 the Lieutenant Governor in Council ordained that no leases which had been, might be, or pretended to be, granted under the authority of any Indian nation would be allowed.<sup>1</sup> In 1803 the matter of the Six Nations' lands again came up. Critics of the administration, as well as the Indians themselves, charged the Government and the trustees with gross neglect of duty in connection with the sales previously mentioned. Lieutenant Governor Hunter asked the Executive Council to examine into these charges. After long consultation the Council replied in the form of a report containing the whole story of the sales.<sup>2</sup>

The total number of blocks actually sold was five, although six had been laid out for the purpose. No trusts had been given, but in each case security for the payment to the Indians of various sums of money was supposed to have been given, such securities to be held by the trustees, Smith, Claus and Stuart. As a matter of fact, only in the case of Block Number 2 was such security given, in the form of a mortgage for £8,887 by Beasley, Willison and Rousseau. Interest at six per cent. was to have been paid yearly to the trustees; but only some £600 actually had been paid, the rest being in arrears. Block 1 had been sold to a person by the name of Stedman. Some time afterwards he died insolvent in an American jail, without having given any security or tried to carry out the agreement. Blocks 3 and 5 had been purchased by Wallace and Jarvis respectively; no security had been given and nothing had been done to fulfil their contracts. The Council members, moreover, were of the opinion that neither, if he now gave security, would be able to pay either the arrears of interest or the future annual payments. Both these grants and Stedman's were now in the hands of the Council. Block 4 apparently was to have been sold in the same way as the others, but for some reason unknown to the Council no sale was effected. Block 6 had been sold to Benjamin Canby; he had obtained letters patent but had given no security. The Council members were unable to discover how he had obtained the patent, but suspected some sort of false representation.

The Council recommended that legal steps be taken to secure the arrears of interest, that Canby be made to enter a proper security, and that Block 1 be transferred to a certain Welles who had offered to take it over on the same terms as Stedman. It was pointed out that Jarvis and Wallace should be made either to enter proper security and pay all arrears or else give up their claims. But these recommendations appear to have resulted in little or no action. So in 1804 an adopted chief of the Six Nations named Norton went to Britain to seek some form of settlement. He claimed that Welles had paid four years' interest and was ready to give a mortgage but could not obtain a deed, though the Indians

<sup>1</sup>Minutes of Council, State C, page 249.

<sup>2</sup>Minutes of Council, State C, page 298. June 24, 1823.



desired that he should have one. As for the rest of the sales, they were now so involved that the Six Nations could do nothing.<sup>1</sup> Not long after this visit matters were still further complicated by the action of the Six Nations in disavowing Norton's proceedings; certain of their representatives signed documents stating that they were satisfied with what had been done.<sup>2</sup>

Meanwhile Beasley wished to come to an agreement over Block 2. He offered to pay £5,000 cash and give a mortgage for the balance of what he owed. In a report on this offer,<sup>3</sup> the Executive Council claimed that it was difficult to determine the precise amount owed by Beasley, and advised the calling of a full Council of the Indians at Niagara, where he might receive credit for whatever amount he had paid. It was further recommended that Sir John Johnson be added to the Board of Trustees. Acting on this advice a meeting was held, at which the Indians acknowledged receipt of the monies Beasley claimed to have given the trustees. Upon hearing of this meeting Norton expressed doubt, and referred vaguely to "means taken to obtain apparent declarations from an illiterate people."<sup>4</sup> It appeared later that Beasley had sold many lots, and the purchasers, who said they knew nothing of the mortgage, refused to give up their land, for which reason the Executive Council considered it wise to allow Beasley to continue his payments.

The sale of Block 1 still remaining incomplete, in 1806 an offer was made by a man named Penfield.<sup>5</sup> But he in turn failed to fulfil the terms and the land reverted to the trustees. The history of its subsequent sales is long; in 1816 William Dickson bought it for £15,000 and the assumption of the mortgage. Block 2 went to Beasley and his associates. Block 3 eventually was broken up; Wallace, the original purchaser, received 7,000 acres; Ann Claus, daughter of Sir John Johnson, was given 10,000 acres and Brant 5,000; Captain Pilkington of the Royal Engineers purchased 15,000 acres; Beasley was given 3,000 acres to supply a deficiency in his block, and the remainder was sold to Jacob Erb and others.<sup>6</sup> After a good deal of trouble, Jarvis was forced to surrender his claim to Block 5, which then was made over to Lord Selkirk and eventually came into the hands of Attorney-General Boulton with the principal still unpaid. Canby already had acquired a patent for Block 6, and the Six Nations appear not to have expected any large payment.

In 1806 a purchaser for Block 4 appeared in the person of Thomas Clark of Queenston. But objections were raised by a gentleman named Cozens who claimed priority of purchase, and thereby hangs a tale possessing all the features of a modern novel, including a search for a lost deed, the theft of legal papers, fraudulent practices upon the person of an old man in his dotage, an old trunk containing valuable papers left in a garret, and other details of the sort.<sup>7</sup> Cozens claimed that his father had made a purchase of the land in 1796 from Brant personally, but the

<sup>1</sup>Q 292, page 218. Norton's memorial.

<sup>2</sup>For a discussion of this point see Note D, Can. Arch., 1892.

<sup>3</sup>Minutes of Council, State C, page 380. 1804.

<sup>4</sup>To Cooke. Q 303, page 120.

<sup>5</sup>Minutes of Council, State D, page 225.

<sup>6</sup>Minutes of Council, State I, page 357. May 14, 1830.

<sup>7</sup>Q 392, I, passim

deed never had been recorded, and through a series of accidents, or worse, the documentary proofs of the sale had been lost, though the sale itself was so well known that the Assembly had passed a resolution favouring his claim. In 1835 a decision was given in favour of Clark;<sup>1</sup> it was pointed out that the sale in any case was invalid, because Brant had no power to sell Indian lands. Moreover, a very long time had elapsed during which Cozens had slept upon his rights, even allowing sales of the lands included in the block without notifying the proper authorities. In the absence of the necessary documents it was quite impossible to recommend a confirmation of the title or the payment of an equivalent for the land, unless Cozens should obtain the sanction of the Indians in council.

In 1809 a case of leasing came up. A narrow strip of land in an Indian reserve in Glengarry County had been rented in part to certain settlers. Disputes over payment of the rents arose, as there was no legal means of enforcing it. A deputation of Indians came to Lieutenant Governor Gore to ask that a certain William McGillivray be permitted to lease the entire tract in perpetuity for an annual rent of \$600. But Gore informed them that his instructions precluded the giving of his consent to any such arrangement. McGillivray then petitioned the Home Government and a long correspondence ensued. But the troublesome results arising from the Six Nations' sale served as a warning against any further transgression of the principle of non-alienation of Indian reserved lands, and finally the request was refused.

The purchase from the Chippewas in 1811 of a tract of some 250,000 acres lying between Lake Simcoe and the eastern end of Lake Huron is typical of those sales which were effected for goods at the Montreal price. In this case they amounted in value to £4,000 cy. The list is interesting: ball and shot, blankets, calico, broadcloth; flints, common, rifled, and chief's guns; plain and laced hats, silk handkerchiefs, hoes, brass kettles, butcher knives, linen, mirrors, ribbon, serge, fire steels, scissors, carrot tobacco, sewing thread, vermilion and numberless other articles.<sup>2</sup>

In May of 1815 Drummond was informed by Bathurst that the Indian Department was to be placed under military control. The change was effected in August of 1816, transferring the authority to the Commander of the North West Provinces. Thereafter it was distinctly military in character; a special uniform was assigned to its officers in 1823. Until 1832 its expenditure was paid out of the military chest; after that year it was covered by the Imperial Grant for the Indian Department. Gore disapproved strongly of the transfer to military control. He pointed out that the settlements now had come into direct contact with Indian lands, resulting in disputes which the Civil Government alone could settle promptly.<sup>3</sup> But to his objections no serious answer was given, and the Indian lands continued to be directed from Quebec.

In 1815 Manitoulin Island was purchased, the intention being to establish a military post on its westernmost part. In January of 1816

<sup>1</sup>Minutes of Council, Land R, page 93.

<sup>2</sup>Q 314, page 151.

<sup>3</sup>To Bathurst. Q 320, page 308.

Gore sought information regarding the Six Nations' reserve on the Bay of Quinté, with a view to purchase for settlement purposes. This tract of twelve miles square contained but a few families, and it was thought probable that they might be persuaded to sell it and join the rest of the tribe on the Grand River tract. His successor, Maitland, recommended to the Home Government that the land be purchased for a naval settlement, and this was done in 1819. In that same year it was found necessary for settlement purposes to purchase townships in the rear of all the settlements from the Ottawa to Lake Simcoe.

A minute of Council in May of 1821 awarded to captains in the Indian Department land grants of 800 acres each, in the same way as to captains of militia.<sup>1</sup> A more important matter was Maitland's plan for ameliorating the condition of the Indians.<sup>2</sup> He pointed out that the Six Nations' reserve no longer was useful to them for hunting purposes, and proposed that it be vested in a Board of Trustees, to be sold or leased for the benefit of the Indian owners. The land would find ready sale in England. Each Indian head of a family was to remain in possession of a certain quantity of land by patent. The monies derived from the sale might be used in part to maintain a mission and schools; the rest would be a fund out of which a stated sum of money each year could be given to each individual Indian. When this plan was presented to the Treasury Lords they said they would not withhold their consent to it provided its execution entailed no expense on Britain and created no dissatisfaction among the Indians by depriving them of too much land.<sup>3</sup> Encouragement of this cold sort, coupled with a knowledge of the difficulties created by the sale of the six blocks of the Grand River lands, appears to have deterred Maitland from putting the plan into execution.

Colonel William Claus died in 1826 and was succeeded by Inspector General Darling. In 1828 the office of Superintendent-General was abolished and that of Chief Superintendent was formed, Darling being the first incumbent. The duties of this position resembled those of its predecessors. Chiefly they were to settle Indian disputes, to give returns of presents issued, to keep accounts of land payments with each tribe, to procure for them advances of money or goods on any sale, to try to introduce agriculture, to protect their lands from encroachment by the white settlers, to certify payments of annuities, to be the intermediary between the Indians and Government, and to watch over their interests generally. The deputy superintendents had much the same duties, but were limited to their respective tribes.

John Claus, who had succeeded his father, William Claus, as trustee of the Six Nations, fell under suspicion of dishonesty. The Indians complained that they were unable to obtain a satisfactory account of the dividends he had received. His conduct was investigated and he was discharged. Messrs. Baby, Dunn and Markland being appointed in his place. Possibly this unfortunate occurrence hastened the placing of the Six Nations' affairs directly under the Indian Department; in June of 1839 the functions of the trustees ceased.<sup>4</sup>

<sup>1</sup>Minutes of Council, Land L, page 65.

<sup>2</sup>Q 329, page 366.

<sup>3</sup>Q 337A, page 72.

<sup>4</sup>Jarvis Papers, B 27, page 26.



In 1830 the military character of the Department ended and it was divided into sub-departments for Upper and Lower Canada respectively. The former was placed under the jurisdiction of the Lieutenant Governor, with Colonel James Givens as Chief Superintendent, and so remained until after the union of the provinces. More important still was the change in policy. At first the Crown had retained control of the Indians for military and diplomatic reasons. Later it became necessary to protect them from land grabbers. But now came a clearer realization of the duty of the State in civilizing and educating them. Previous efforts along this line had been confined to private or religious bodies such as the New England Company, a London organization which built villages and schools for the Rice Lake Indians. The tribes residing on the shores of Lake Simcoe and near Matchedash Bay were now placed under a superintendent of the Department and encouraged to clear a tract of land between Lakes Huron and Simcoe. Implements were furnished, experienced farmers were engaged to instruct them, and schoolmasters were brought in to teach their children. Houses for their use were built on detached lots. The Western Indians and those from the north shore of Lake Huron were to be prevailed upon to follow this good example; meanwhile similar measures were on trial at the stations on the Thames and on Lake St. Clair. The money formerly used in supplying presents was now diverted to this much more useful purpose. An additional measure was the permitting of a corn mutation for the articles due on past sales to some tribes in the settled parts; it was hoped that in time the Indians would see the benefit of such an arrangement, and would prefer it.

The total amount of sales by the Commissioner of Crown Lands on account of the different tribes of Indians between 1830 and 1837 was about 55,527 acres, at a price exceeding £52,807.<sup>1</sup> In 1834 Lieutenant Governor Head reported an Indian population in Upper Canada of approximately 5,000. Head took a special interest in their affairs. He believed contact with the whites injured the Indians, and hence that the proper course was first to isolate and then to try to Christianize them.<sup>2</sup> His most ambitious scheme in this connection was the turning of Manitoulin and neighbouring islands into one large reserve, to which he induced a number of tribes to retire, giving up their lands on the mainland to do so. But the Aborigines Protection Society protested the cession as being "the exchange of 3,000,000 acres of the richest land in Upper Canada for 23,000 barren unproductive islands remote from the residence of Europeans."<sup>3</sup> So many complaints on this score reached the Colonial Office that Secretary Glenelg ordered the project to be suspended until a proper report could be made upon it. In an official letter Glenelg set forth the views held by the Home Government on the subject. "The first step to the real improvement of the Indians is to gain them over from a wandering to a settled life, and for this purpose it is essential that

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<sup>1</sup>Q 397, II, page 378.

<sup>2</sup>A committee of the Executive Council of Lower Canada had given expression to this theory, in a report on the Indians: "In every scheme, therefore, for the improvement of the Indians the first object to be aimed at is their location in compact settlements apart, if possible, from the population of European descent." Q 412B, page 79.

<sup>3</sup>Q 400, II, page 101.



they should have a sense of permanency in the locations assigned to them, that they should be attached to the soil by being taught to regard it as reserved for them and their children by the strongest securities. Their locations therefore should be granted to them and to their posterity for ever by a grant under the Great Seal of the Province on such terms and accompanied by such provisions as shall render them unattachable by creditors and inalienable either by the tribe or any occupant without the joint concurrence of the Lieutenant Governor for the time being, the principal chief of the settlement, and the resident missionary or missionaries." In addition he recommended special inducements to engage in agriculture, the gradual conversion of the customary presents into agricultural implements, the erection of schools, and the enforcement of severe penalties against persons supplying them with alcoholic liquors.

In the last year of his administration Head put into effect a plan of a different sort. He notified those Indians who where not in British territory but to whom the British Government, for political and trade purposes, had continued to give presents each year, that all presents in future would be discontinued. At the same time he informed them that if they came into British territory they would be allowed to settle in Manitoulin Island and the presents would be continued. Thus encouraged, a number of Michigan Indians signified their intention of accepting the offer, and the Executive Council recommended that food and other necessities be supplied them, that a saw mill be erected at once and a flour mill later.<sup>1</sup> The money for these purposes was to be taken from the military chest.

As mentioned previously, by 1840 practically all of what is now southwestern Ontario had been ceded by the Indians for settlement purposes. A large part of the reserve on the Grand River, which was the largest single reserve for any tribe, also had been alienated, on the same principle as exemplified in the sale of the six blocks. Of the original 570,000 acres comprised in it, only 187,000 acres remained by 1838.<sup>2</sup> Durham's report charged the Provincial administration with culpable neglect in recording many of these transfers; indeed most of the alienated tract had passed into the hands of men connected with the Government. Charles Buller, when investigating the Upper Canada land system, could obtain no reliable account of the various transactions, and it appeared that the Government had not been any more careful in the capacity of trustees than in the general administration of the Crown Lands of the province.

Because of the public nature of the trust involved in the management of Indian lands, perhaps more charges were brought against the provincial administration in that connection than in any other. As in the case of the Crown Lands generally, many of these charges were untrue or were based on an imperfect knowledge of the facts. In other cases, such as that of the younger Claus, it is quite probable that corrupt practices did exist. Some of the charges eventually were used as political propaganda. Thus Gourlay claimed that William Dickson bought 94,000 acres of Indian lands for less than a dollar an acre, expecting to realize a very large profit by reselling. He also charged Claus and Dickson with influencing the

<sup>1</sup>Minutes of Council, State M, page 60.

<sup>2</sup>Durham's Report—Lucas, volume III, Appendix B, page 58.

election of Indian chiefs by presents, later persuading them to make over to Dickson 6,000 acres of land, supposedly for his trouble in drawing up certain legal forms for their use.<sup>1</sup> Certainly a number of free grants were made by the Indians to various officers of the Indian Department, but the facts as to whether or not any irregularities existed in connection with them would be very difficult to determine.

The weak point of the Indian lands administration undoubtedly was the lack of correct and vigorous business methods. This was demonstrated very clearly in the investigation preceding the Report of 1840. In 1835 a gentleman by name of Hepburn was appointed Clerk to the Indian Department. He found everything in a mess. Colonel Givens, the Superintendent, was old and infirm. The account books of the annuities and other funds were kept very badly. Hepburn made an effort to improve the situation, and the action of the Home Government in dispensing with the services of trustees for the Six Nations and placing them directly under the Department helped matters considerably. But the office was too small. There was "an appearance of diffuseness and want of concentration." The Indian Office, as a matter of fact, at this time possessed little or no information concerning the Indian property. Systematic account books appear never to have been opened until after Hepburn's appointment.

The outstanding abuses in connection with lands actually belonging to the Indians, as classified by the committee preparing the 1840 Report, came under three heads. First there was the destruction of game by surrounding settlers. This was a very minor consideration, however, for the extinction of game would do away with their pretext for indulging the old life in preference to agriculture. Another was the illegal cutting and removing of timber. Usually this timber was cut under pretended license from a chief, much of it going to American speculators. The land so despoiled soon became very difficult to clear for agricultural purposes because of the dense underbrush which quickly grew up. A third difficulty was the illegal occupation of Indian land by trespassers, under pretended sale or license from individual Indians. It was an aggravated form of the squatter difficulty already experienced in this connection with the Crown and clergy reserves, one which the Government long had endeavoured to remedy. The most awkward situations arose out of the purchase of supposed rights, from the Indians themselves, by ignorant settlers who knew nothing of their legal status. After many years of occupation it was not easy to decide on the justice or otherwise of dispossession, more especially in cases where the original trespasser had sold out to an industrious settler.

In this connection administration often had been lax. Many of these squatters were adventurers from the United States, selling liquor to the Indians. Another complication was the existence of 999-year leases, granted by Brant under Government sanction for the benefit of his tribe. Many persons, either ignorantly or otherwise, obtained lands not thus authorized, often at the same time and place. Notices, proclamations and Acts similar to those promulgated for the protection of the Crown and clergy reserves were used as methods of prevention, with but imperfect success.

<sup>1</sup>Gourlay, *Statistical Account of Upper Canada*, vol. II, page 468.

There was a divergence of opinion as to the manner in which lands surrendered by the Indians should be sold for their benefit. This service, of course, was one of the most important connected with their interests. It was performed by the Surveyor-General and the Commissioner of Crown Lands. Superintendent Jarvis was of the opinion that it should be transferred to the Indian Department instead of remaining in the hands of the civil authorities. He considered the interposition of the Land Department both unnecessary and expensive. His description of the existing method as given to the 1840 Committee may be quoted: "A clerk in the Receiver-General's office is made the accountant for the Six Nation Indians. The Surveyor-General surveys blocks of Indian lands designed to be sold; the Commissioner of Crown Lands has the selling of them and is both auctioneer and accountant. The Surveyor-General's office has . . . a percentage or charge for surveying—the Commissioner of Crown Lands another for selling—for receiving the instalments—for keeping the accounts—in fact, for doing what should be the most important part of the duty of the Chief Superintendent, and yet hitherto that officer has not been allowed even a clerk to assist him in the daily necessary duties of the department, though sums of money have been taken and expended from the Indian funds in percentages and in rewarding the services of other departments quite sufficient . . . to have placed and maintained the Indian Office on a most respectable and efficient footing."

The Commissioner of Crown Lands, however, defended the existing system. He claimed that by sale on credit, through the Commissioner, a higher price was obtained, and a large number of actual settlers made purchases. Moreover, as patents for all lands were issued through the Surveyor-General's Office, it would be foolish to make exception in the case of Indian lands. He also pointed out that agents for the sale of public lands were stationed in every district, and these could advertise Indian lands much more readily than could a separate department.

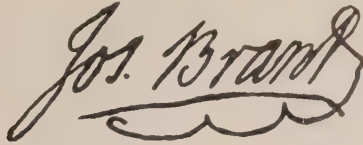
The members of the Examining Committee, after hearing both sides, declared themselves "convinced" that it would be better to leave the contracting for sales entirely to the Chief Superintendent. His certificate of sale and payment would be a warrant to the Surveyor-General to issue a patent.<sup>1</sup> They considered it natural that the Chief Superintendent should be better informed on points of interest to prospective purchasers of these particular lands, and in addition such an arrangement would lighten considerably the duties of the Surveyor-General's office and eliminate certain extra payments.

So the matter remained when the administrations of the two provinces were joined by the Act of Union. In considering the lack of proper business management, the same remarks apply as in the case of the Crown Lands generally, save that a large part of the blame attached directly to the Home Government through the Military Department. But in the matter of corruption and dishonest practices generally, it should be remembered that the opportunities and inducements created by the peculiar

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<sup>1</sup>The similarity of this scheme to that practised by Colonel Talbot is suggestive.

nature of the Indian lands themselves and the unsophisticated character of the owners were both numerous and powerful, while the chances of detection were comparatively slight. It would appear to be a matter of some congratulation that the administration so consistently maintained its comparatively high level of integrity.

A facsimile of the signature of Joseph Brant, the Indian chief. The signature is written in a cursive, flowing script. The first part of the signature, 'Jos. Brant', is written in a more formal cursive, while the final part, which appears to be a surname or a tribal name, is written in a more stylized, almost calligraphic cursive. The signature is underlined with a simple, horizontal line.

Facsimile of the signature of Joseph Brant, the Indian chief.



## CHAPTER XI

### SUMMARY.

To review properly the course of events in the land history of Upper Canada it is essential to have a standard by which judgment may be guided, and involuntarily there comes to mind the recommendation made to Lord Durham by Buller at the close of his investigation: "Any system adopted in the disposal of the public land should be simple, uniform, and equal, and while it prevents the acquisition of land except by those who intend to use that which they acquire, should afford every facility of selection and acquisition to such persons." In commenting on the failure of Upper Canada to approximate this ideal, it should be remembered that Canada, after many years of experience, still awaits the application of a land system possessing these difficult but indispensable qualifications.

Reference has been made to the prominence with which land matters figured in the political history of the period. The defects of the land system would have attracted far less attention had they not offered points for attack upon the political system. Hence, in considering contemporaneous criticism of the land administration due allowance should be made for the presence of political animus. It is unfortunately true that there was good reason for discontent, although criticism is much simpler now than in a time when democratic ideals were very young. When a paternal Government undertook to regulate affairs, both great and small, for an Anglo-Saxon dependency three thousand miles away, it meant mistakes which could be realized only after serious harm had resulted. Perhaps some necessity for such a policy existed in the need for lessening that corruption which to a greater or less degree appears to pervade the administration of all new and unexploited lands. Perhaps it was of some experimental value, since it permitted the working out of various theories of government and administration unhampered by local custom or prejudice. But the result of experiments in democratic government all over the world would seem to prove that once self-government is secured the discontent very largely ceases, even though particular abuses and mistakes may continue until the lessons of that self-government are learned.

In view of the political power and authority possessed by the Lieutenant Governors, it perhaps was unfortunate that they remained so short a time in office. During the interregnums matters often dragged or went wrong, and there was a tendency to leave business of any importance to the attention of the next administrator. Moreover, governors of enterprise and ability were given no time in which to follow out any seriously constructive programme. Another policy which brought very doubtful results was that of introducing military values into purely civil problems. A good example is the "alien" trouble which came after the war in 1814. It is interesting to note that, on paper at least, the Home Government appears to have adopted the desirable attitude in dealing with Upper Canadian problems. "I am always unwilling to make any changes which are not clearly

desirable and approved of by those whose local knowledge and observation ought to make their opinions deserving of attention,"—so wrote Lord Bathurst in 1822.<sup>1</sup> Unfortunately no proper steps were taken to ensure the receipt of opinions from the principal schools of thought in the province. When it was discovered that the official representative of the Crown was paying insufficient attention to the political discontents of the time, rebuke followed, but often the harm already had been done. Colborne incurred especial censure because he chose to write private letters to Under Secretary Hay rather than report through the customary channels. Yet Colborne's opinion was not as valuable to the Secretary as that of the body of land workers. It may be noted that even when the Wakefield school of thought predominated in the Colonial Office, and self-government for the dependencies was an accepted doctrine, there was still an attempt to reserve to the Empire the benefit of colonial lands.

One marked feature of the attitude of the Home Government to the whole matter of Crown Lands in Upper Canada was its parsimony, often needless and always foolish. The whole system of finance in practice during most of this period was based on a theory of making the lands pay for everything else. Its failure has been related; its evils cannot be too much stressed. The land revenue was to have covered the cost of successive Indian cessions, necessary to the extension of settlement. When it failed to do so the money had to be obtained from the military chest; friction and delay resulted. It was expected that the cost of surveying these new areas would be easily met from the land revenue; usually such was not the case, and for a number of years surveys were made by a system of contract, resulting in a variety of evils as noted elsewhere. But the least intelligent feature of the whole business, from a financial standpoint, was the method by which the revenue-producing character of the Crown lands was negatived through their transmutation into rewards of merit for every possible class of claimant. By those provisions which gave free grants to United Empire Loyalists, Military Claimants, and many others less deserving of favour, all possible profits were eaten up, and expenditure continued to exceed income until long after the introduction of the sales system. In other words, the Crown lands were not given proper opportunity to exhibit their financial worth.

The story of the Upper Canada lands also exemplifies the failure of lands in Canada to provide an economically satisfactory reward for military service. Always the result has been the accumulation of large areas in the hands of speculators, and undoubtedly this condition will remain until the working out of proper safeguards against this not unpreventable evil. In the case of Upper Canada it would have been much better for the regular and speedy development of settlement had some system of pensions or other form of cash remuneration superseded that of military land grants. It is to be noted that the purely professional character of the soldier of the time rendered his chances of success on the land small indeed.

The Home Government shared with the Upper Canada public its misconception as to the extent and value of the Crown lands and the revenue to be derived from them, and this circumstance explains to a certain degree the severity of the criticism directed against the administration for

<sup>1</sup>Q 337A, page 81. To Maitland, October 12.

supposed inefficiency and corruption alike. Coupled with this misconception there existed in the public mind a certain ignorance as to the real status of the Executive Council. Powerful as that body was, its action could only be indirect through the assent of the Lieutenant Governor, and where there had to be reference to the Home Government it was impotent until instructions came. The natural concomitant of such an arrangement was a tendency to avoid responsibility for the solving of disagreeable or difficult problems, a tendency from which the Council was not wholly free.

Just as the Home Government, by a policy of free grants to favoured classes rendered impossible its own desire for a large land revenue, so it prevented the proper development of settlement by failing to maintain a sufficiently high standard of requirements for cultivation and residence. A revenue being the chief consideration, it was thought wise to encourage settlers, because more settlers meant more fees. To this end settlement duties were made light. It was thought, too, that there must not be too great severity in enforcing fulfilment of duties; as then the settler might leave his land, whereupon it would revert to the Government and lessen the value of contiguous lands, thus lowering the general tone of settlement. But by these methods the Government laid itself open to the evils of speculative settlement; many adventurers took advantage of this laxity merely to comply with the regulations up to the point where possession became possible, and then to sell out to the first bidder—usually a speculator. Of course the ultimate result was the retardation of settlement and the diminution of fees, through the formation of large areas of vacant land held out of use while the owners awaited a rise in price. The success of Colonel Talbot under a system so opposite in character is a commentary on the value of rigid requirements of residence and cultivation in any scheme of land settlement. Indeed the whole story of land settlement in Upper Canada would seem to emphasize the conclusion that in such matters it is wiser to make haste slowly; artificial means of attracting immigration and hastening settlement appear often to bring with them evils which take years in the removing.

In examining the ill success of the system of free grants, it should also be remembered that the common settler, instead of being the person most favoured, received least attention. In the report made by the Surveyor-General in 1826,<sup>1</sup> it is instructive to note the 500,000 acres excess of privileged, special and surveyors' grants over the common grants. Add to that excess the 3,142,137 acres of Crown and clergy reserves, and a new light is thrown upon the slow progress of Upper Canada during the early years of its history. Attention already has been drawn to the failure of the sales system to provide a sufficient revenue. Largely it was due to difficulty in collecting arrears of payments, and here the unwillingness of the Government strictly to enforce its own penalties again resulted in non-attainment of the objective. It is further to be remembered that the system of sales was heavily handicapped by the continuation of privileged grants, especially to the United Empire Loyalists. The system of cash sales was introduced at so late a date that the results of its workings were scarcely discernible in the short period before the union of the provinces.

<sup>1</sup>See Chapter VI.

Many interesting problems are suggested by a survey of the history of the Crown lands. There is, for example, the matter of State vocational training along agricultural lines for the new settler. Upper Canada suffered to the usual extent from immigrants absolutely unfitted for the life they had chosen. In this connection one thinks of the description given by the old servant: "Sure they all had money, but few of them had any sinse, and none of them knew how to work."<sup>1</sup> But perhaps of greatest interest will be the study of methods for preventing the holding of wild land by speculators. The words of Robert Gourlay still have deep significance for Canadians: "It never should be forgotten that wild land is the chief bane of this new country." Already there are indications of the awakening of the public mind to a realization of the handicap to progress inherent in any system which needlessly permits any part of the public lands to be held out of use.<sup>2</sup>

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<sup>1</sup>Quoted in Lizar's "Days of the Canada Company," page 20.

<sup>2</sup>An example is the British Columbia Land Settlement and Development Act as amended in 1918. By this Act large tracts of land alienated by speculators are being appraised and the owners required to list them for sale. If they refuse to sell at the appraised value, they are required to perform settlement duties, in default of which they are subject to a supertax which in time will become so burdensome as to compel them either to use the lands or allow them to be returned to the Government.



## APPENDIX "A."

TABLE OF LANDS GRANTED IN UPPER CANADA, 1798-1827.<sup>1</sup>

Year.	District.	Grants.	Acres.
1798.....	Home .....	1,483	479,981 1/4
	Eastern .....	1,285	343,885 1/2
	Western .....	371	176,840 3/4
	Midland .....	515	169,750
	Total .....	3,654	1,170,457 1/2

Russell informed Portland that this was not the whole of the land given away in the province, as the number of deeds remaining to be perfected possibly nearly equalled these in quantity.

Year.	District.	Grants.	Acres.
1799.....	Home .....	220	76,666 3/5
(to Aug. 15)	Eastern .....	25	18,744
	Western .....	52	47,537
	Midland .....	42	12,777 1/5
	Total .....	339	155,724 4/5

Aug. 16,	Home .....	40	15,299
1799,	Niagara .....	5	1,500
to Dec. 31,	Eastern .....	13	9,012
1800.	Johnstown .....	20	7,191
	Western .....	9	1,138
	London .....	20	83,780
	Midland .....	20	4,766
	Total .....	127	122,696

1801.....	Home .....	430	121,867 1/2
	Niagara .....	198	39,590 1/2
	Eastern .....	142	40,362
	Johnstown .....	326	83,011 1/2
	Western .....	68	23,160 3/4
	London .....	171	73,154
	Midland .....	401	98,472
	Total .....	1,736	479,618 1/4

The faith of the Government was pledged for these grants by land board certificates or Orders of Council prior to Hunter's administration.

Year.	District.	Grants.	Acres.
1802.....	Home .....	517	133,417
	Niagara .....	307	65,337
	Eastern .....	353	93,933
	Johnstown .....	381	93,126
	Western .....	138	28,976 3/4
	London .....	280	83,218
	Midland .....	516	107,121
	Total .....	2,492	605,128 3/4

Of these grants, 2,226 were pledged prior to Hunter; 226 were authorized subsequently.

<sup>1</sup> Abstracts from the Auditor's Docket Book, most of which were reprinted in the Assembly Journals. Some returns were incomplete.

Year.	District.	Grants.	Acres.
1803.....	Home .....	214	47,339 1/2
	Newcastle .....	90	20,382
	Niagara .....	147	32,771
	Eastern .....	427	92,860
	Johnstown .....	470	100,743
	Western .....	109	27,460
	London .....	86	35,955
	Midland .....	422	80,558
	Total .....	1,965	438,068 1/2

Of these grants, 1,673 were pledged prior to Hunter; 292 were authorized subsequently.

Year.	District.	Grants.	Acres.
1804.....	Home .....	157	35,672 1/3
	Newcastle .....	46	11,221
	Niagara .....	76	19,673 1/2
	Eastern .....	182	41,952 1/5
	Johnstown .....	190	48,178 2/3
	Western .....	72	19,409 1/3
	London .....	87	37,360
	Midland .....	236	39,797 3/5
	Total .....	1,046	253,264 1/2

Of these grants, 697 were pledged prior to Hunter; 349 were authorized subsequently.

Year.	District.	Grants.	Acres.
1805.....	Home .....	221	47,192 2/5
	Newcastle .....	42	11,934
	Niagara .....	49	10,126
	Eastern .....	33	6,656
	Johnstown .....	95	21,666
	Western .....	33	5,818
	London .....	45	19,052
	Midland .....	69	15,719 2/5
	Total .....	587	138,163 4/5
1806.....	Home .....	155	32,007 4/5
	Newcastle .....	30	7,600
	Niagara .....	48	11,022
	Eastern .....	101	19,520
	Johnstown .....	69	14,243
	Western .....	66	16,957
	London .....	54	16,715
	Midland .....	81	14,578 4/5
	Total .....	611	139,975 7/10
1807.....	Home .....	229	83,039 9/10
	Newcastle .....	36	8,601
	Niagara .....	41	40,072
	Eastern .....	230	51,417
	Johnstown .....	115	26,059
	Western .....	35	8,055
	London .....	38	12,300
	Midland .....	81	14,578 4/5
	Total .....	805	244,122 7/10
1808.....	Home .....	229	49,816 2/5
	Newcastle .....	44	8,580
	Niagara .....	30	8,325
	Eastern .....	91	18,292
	Johnstown .....	171	34,245
	Western .....	80	13,434
	London .....	32	8,600
	Midland .....	180	38,494 1/5
	Total .....	857	179,786 3/5

Year.	District.	Grants.	Acres.
1809.....	Home .....	98	21,532
	Newcastle .....	34	9,257
	Niagara .....	46	9,272 1/2
	Eastern .....	79	16,250
	Johnstown .....	118	22,878
	Western .....	26	4,811
	London .....	26	6,976
	Midland .....	79	14,648 3/5 2/10
Total .....		506	105,624 1/2 3/5 2/10
1810.....	Home .....	99	20,692
	Newcastle .....	25	5,588
	Niagara .....	24	3,604 1/2
	Eastern .....	69	10,962
	Johnstown .....	118	25,210
	Western .....	30	6,385
	London .....	20	3,729
	Midland .....	155	28,367 4/5
Total .....		540	104,537 1/2 4/5
1811.....	Home .....	238	46,379 1/10
	Newcastle .....	24	5,190
	Niagara .....	41	8,569
	Eastern .....	70	15,194 5/10
	Johnstown .....	61	8,924
	Western .....	23	4,906
	London .....	43	14,024
	Midland .....	83	12,400 3/10
Total .....		583	115,586 9/10
1812.....	Home .....	89	18,456 3/5
	Newcastle .....	23	5,950
	Niagara .....	29	6,800
	Eastern .....	36	11,436
	Johnstown .....	84	16,708
	Western .....	9	4,022
	London .....	30	13,954
	Midland .....	40	9,284 3/5
Total .....		340	86,611 1/5
1813.....	Home .....	19	4,201
	Niagara .....	27	5,910
	Western .....	9	2,776
	London .....	16	4,770
	Newcastle .....	5	2,450
	Johnstown .....	9	1,601
	Midland .....	7	1,171
	Eastern .....	1	1
Total .....		93	22,880
1814.....	Home .....	2	200 1/10
	Niagara .....	1	700
Total .....		3	900 1/10
1815.....	Home .....	15	4,719
	Niagara .....	13	1,854
	Western .....	2	500
	London .....	39	15,964
	Newcastle .....	14	3,100
	Johnstown .....	31	6,950
	Midland .....	10	1,936 4/10
	Eastern .....	3	202
Total .....		127	35,225 4/10

Year.	District.	Grants.	Acres.
1817.....	Home .....	42	6,773 1/5
	Newcastle .....	323	71,400
	Midland .....	95	11,318 1/4 1/3
	Johnstown .....	31	6,074
	Eastern .....	57	10,038
	Ottawa .....	5	2,426
	Niagara .....	25	3,882 1/2
	Gore .....	17	9,089 1/5
	London .....	50	15,709
	Western .....	16	3,654
	Total .....	661	140,364 1/2
1818.....	Home .....	18	2,407
	Newcastle .....	59	14,315
	Midland .....	149	16,579 9/10
	Johnstown .....	30	5,572
	Eastern .....	44	7,569
	Ottawa .....	5	2,450
	Niagara .....	39	4,565
	Gore .....	11	2,550
	London .....	46	8,818
	Western .....	88	19,537
	Total .....	489	84,362 9/10

(In 1818 the Auditor was instructed to state, in addition to the gross number of acres granted, the number of grants of each class made in each district.—Q 319A, page 147.)

Under 100 acres .....	105	Of 400 acres .....	18
Of 100 " .....	57	500 " .....	3
200 " .....	249	1,000 " .....	1
300 " .....	9	1,200 " .....	1

Year.	District.	Grants.	Acres.
1819.....	Home .....	66	14,451
	Eastern .....	39	4,965 1/2
	Johnstown .....	20	3,607
	Midland .....	40	2,750 3/10
	Newcastle .....	18	16,555
	Niagara .....	1	200
	Gore .....	6	1,900
	London .....	52	10,100
	Western .....	8	1,685
	Total .....	250	56,213 8/10
Under 100 acres .....	40	Of 400 acres .....	4
Of 100 " .....	45	500 " .....	1
200 " .....	133	1,000 " .....	2
300 " .....	5	1,200 " .....	1

Year.	District.	Grants.	Acres.
1820.....	Home .....	74	46,622
	Eastern .....	12	2,101 2/3
	Johnstown .....	350	70,892
	Midland .....	60	12,972 1/2
	Newcastle .....	45	14,863
	Niagara .....	13	4,615 1/2
	Gore .....	9	3,666
	London .....	84	31,424
	Western .....	12	1,841
	Total .....	659	162,236 2/3
Under 100 acres .....	48	Of 500 acres .....	3
Of 100 " .....	342	1,000 " .....	1
200 " .....	163	1,200 " .....	4
300 " .....	5	2,000 to 3,000 " .....	10
400 " .....	7	4,000 " .....	1



Year.	District.	Grants.	Acres.
1821.....	Home .....	155	31,904
	Eastern .....	17	1,870 5/10
	Ottawa .....	20	17,585
	Johnstown .....	157	18,241 3/4
	Midland .....	32	5,654 8/10
	Newcastle .....	71	14,771
	Niagara .....	8	455 1/2
	Gore .....	78	12,300
	London .....	91	69,158
	Western .....	21	10,051
Total .....		650	181,991 1/4 3/10

Under 100 acres .....	69	Of 500 acres .....	6
Of 100 " .....	290	1,000 " .....	2
200 " .....	194	1,000 to 2,000 " .....	9
300 " .....	6	Over 14,000 " .....	2
400 " .....	10		

Year.	District.	Grants.	Acres.
1822.....	Home .....	247	49,232 6/10
	Eastern .....	11	1,103 1/2
	Johnstown .....	68	11,138 5/8
	Niagara .....	5	670
	Gore .....	120	29,054
	Newcastle .....	91	18,416
	Midland .....	35	7,763 1/2
	Western .....	20	3,588
	Ottawa .....	8	1,623
	London .....	350	14,697
Total .....		959	107,286 1/10 1/8

Under 100 acres .....	69	Of 500 acres .....	40
Of 100 " .....	398	1,000 " .....	6
200 " .....	14	1,000 to 2,000 " .....	8
300 " .....	17	3,000 " .....	1
400 " .....	16		

Year.	District.	Grants.	Acres.
1823.....	Home .....	167	34,918
	Eastern .....	15	1,766
	Ottawa .....	29	8,826
	Johnstown .....	14	3,614
	Bathurst .....	29	12,600 3/4
	Niagara .....	7	723
	Gore .....	123	23,800
	Newcastle .....	111	20,450
	Midland .....	65	39,292 8/10
	Western .....	47	16,276
	London .....	264	49,621
Total .....		871	211,877 11/20

Under 100 acres .....	95	Of 400 acres .....	10
Of 100 " .....	332	500 " .....	34
200 " .....	298	1,000 " .....	2
300 " .....	18	Over 1,000 " .....	18

Year.	District.	Grants.	Acres.
1824.....	Home .....	135	20,207
	Eastern .....	14	3,203
	Ottawa .....	74	18,520
	Johnstown .....	194	20,392 5/8
	Bathurst .....	759	83,209
	Midland .....	40	10,595 1/2
	Newcastle .....	199	81,381
	Niagara .....	8	867

Year.	District.	Grants.	Acres.
1824.....	Gore .....	144	22,750
	Western .....	65	14,450 8/10
	London .....	177	29,626
	Total .....	1,810	255,201 37/40
Under 100 acres .....	211	Of 400 acres .....	19
Of 100 " .....	1,189	500 " .....	13
200 " .....	272	1,000 " .....	4
300 " .....	24	Over 1,000 " .....	11

Year.	District.	Grants.	Acres.
1825.....	Home .....	156	21,583 1/2
	Eastern .....	28	3,182 1/7
	Ottawa .....	46	8,536
	Johnstown .....	17	2,321
	Bathurst .....	195	25,926
	Niagara .....	3	300 1/2
	Gore .....	117	17,750
	Newcastle .....	115	21,224
	Midland .....	37	4,957 4/5
	Western .....	34	9,040 1/2
	London .....	122	22,915
	Total .....	870	138,000 31/70

Under 100 acres .....	91	Of 400 " .....	3
Of 100 " .....	494	500 acres .....	19
200 " .....	200	1,000 " .....	2
300 " .....	14	Over 1,000 " .....	6

Year.	District.	Grants.	Acres.
1826.....	Home .....	114	19,934 1/5
	Eastern .....	5	653
	Ottawa .....	46	18,910
	Johnstown .....	29	4,861
	Bathurst .....	148	14,979 2/5
	Gore .....	104	15,991 1/2
	Newcastle .....	110	22,473 1/2
	Midland .....	37	7,011
	Western .....	91	22,739
	London .....	91	14,014
	Total .....	776	141,566 3/5

Under 100 acres .....	93	Of 400 acres .....	3
Of 100 " .....	355	500 " .....	13
200 " .....	237	1,000 " .....	3
300 " .....	9	Over 1,000 " .....	7

Year.	District.	Grants.	Acres.
1827.....	Home .....	144	23,183 1/2
	Eastern .....	69	7,563
	Ottawa .....	32	5,500
	Johnstown .....	19	2,945
	Bathurst .....	118	16,262
	Niagara .....	1	200
	Newcastle .....	97	14,515 1/2
	Gore .....	72	10,538 1/2
	Midland .....	25	10,613 1/2
	London .....	61	8,843
	Western .....	38	7,402
	Total .....	676	107,566

Under 100 acres .....	75	Of 400 acres .....	4
Of 100 " .....	351	500 " .....	8
200 " .....	201	Over 1,000 acres .....	4
300 " .....	9		

## APPENDIX "B."

## LIST OF SECRETARIES OF STATE ADMINISTERING THE AFFAIRS OF THE COLONIES.

( Henry Dundas, June 8, 1791.  
 ( Duke of Portland, August 7, 1794.  
 Lord Hobart, March 17, 1801.  
 Earl Camden, May 13, 1804.  
 Viscount Castlereagh, July 10, 1805.  
 William Windham, February 5, 1806.  
 Viscount Castlereagh, March 25, 1807.  
 Earl of Liverpool, October 11, 1809.  
 Earl Bathurst, June 11, 1812.  
 Viscount Goderich, April 30, 1827.  
 William Huskisson, August 17, 1827.  
 Sir George Murray, May 30, 1828.  
 Viscount Goderich, November 22, 1830.  
 E. G. (Lord) Stanley, March 28, 1833.  
 Thomas Spring Rice, June 5, 1834.  
 Earl of Aberdeen, December 20, 1834.  
 Charles Grant (Lord Glenelg), April 18, 1835.  
 Marquis of Normanby, February 20, 1839.  
 Lord John Russell, August 30, 1839.  
 Lord Stanley, September 3, 1841.

## LIST OF LIEUTENANT GOVERNORS AND ADMINISTRATORS OF UPPER CANADA.

Col. John Graves Simcoe, July 8, 1792.  
 Hon. Peter Russell (Adm.), July 21, 1796.  
 Lt.-Gen. Peter Hunter, August 17, 1799.  
 Hon. Alexander Grant (Adm.), September 11, 1805.  
 Francis Gore, August 25, 1806.  
 Maj.-Gen. Sir Isaac Brock, September 30, 1811.  
 Maj.-Gen. Sheaffe (Adm.), October 20, 1812.  
 Maj.-Gen. Rottenburg (Adm.), June 19, 1813.  
 Sir Gordon Drummond (Adm.), December 13, 1813.  
 Sir George Murray, April 25, 1815.  
 Maj.-Gen. Sir Fred. Philipse Robinson, July 1, 1815.  
 Sir Francis Gore, September 25, 1815.  
 Hon. Samuel Smith (Adm.), June 11, 1817.  
 Sir P. Maitland, August 13, 1818.  
 Hon. Samuel Smith (Adm.), March 8, 1820..  
 Sir P. Maitland, June 30, 1820.  
 Sir John Colborne, November 4, 1828.  
 Sir F. Bond Head, January 25, 1836.  
 Sir George Arthur, March 23, 1838.  
 (Union Proclamation dated February 10, 1841).

## LIST OF SURVEYORS-GENERAL, UPPER CANADA.

David William Smith .....	1792 to 1804.
Charles Burton Wyatt .....	1805 to 1809.
Thomas Ridout .....	1810 to 1828.
William Chewett (acting) ..	1828 to 1832.
Samuel P. Hurd .....	1832 to 1836.
John Macaulay .....	1836 to .....

## LIST OF COMMISSIONERS OF CROWN LANDS.

Peter Robinson .....	1827 to 1836.
Robert B. Sullivan .....	1836 to ....

## COPIES OF LETTERS.

(a) Grant to Individual Settler<sup>1</sup>

Downing Street,

10th April, 1819.

Major-General Sir P. Maitland.

SIR,—I am directed by Earl Bathurst to acquaint you that he has given permission to Mr. James Radcliffe to proceed as a settler to Canada, and I am to desire that he may receive a grant of land proportioned to his means of cultivation.

I have the honour to be, etc.,

HENRY GOULBURN.

(b) Grant to Body of Settlers.<sup>2</sup>

Downing Street,

24th June, 1823.

Major-General Sir P. Maitland.

SIR,—I am directed by Lord Bathurst to transmit to you the copy of a letter from Mr. Donald Cameron, stating that a number of persons are on the point of emigrating from Scotland to Upper Canada, and to request that on their arrival you will assign to them a convenient tract of land for their settlement.

I am, etc.,

R. WILMOT HORTON.

<sup>1</sup>Q 319A, page 167.<sup>2</sup>Q 337A, page 123



(c) Grant to Naval or Military Settler.<sup>1</sup>

Downing Street,

30th April, 1819.

Major-General Sir P. Maitland.

SIR,—I am directed by Earl Bathurst to convey to you His Lordship's request that you will make to Lieutenant P. J. Elmhirst, of the Royal Navy, a grant of land under the usual conditions and proportioned to his rank in His Majesty's Service.

I have the honour to be, etc.,

HENRY GOULBURN.

(d) Complaint by Settler.<sup>2</sup>

Downing Street,

30th August, 1821.

Major-General Sir P. Maitland.

SIR,—I have the honour to transmit to you herewith an extract from a Mr. John Dibbs, who proceeded as a settler to Upper Canada in the year 1817, and I have to request that you will give directions to ascertain how far his complaint, therein stated, is founded upon fact.

I have the honour to be, etc.,

BATHURST.

(e) Advice *re* Grant.<sup>3</sup>

Downing Street,

24th September, 1819.

Sir P. Maitland, K.C.B., Etc.

SIR,—I transmit herewith the copy of a letter and memorial from Mr. Buchanan praying for a grant of . . . land near the falls of the River Credit; and I am to request you will furnish me with your opinion as to the effect which such a grant might have upon the general interests of the colony.

I have the honour, etc.,

BATHURST.

<sup>1</sup>Q 319A, page 171.

<sup>2</sup>Q 337A, page 43.

<sup>3</sup>Q 319A, page 197.

(f) From the Surveyor-General.

Surveyor-General's Office,

23rd January, 1796.

To Messrs. Swift and Sawyer, in the Genesee Country.

GENTLEMEN,—I am directed to write to you to acquaint you that from information in my office there is great reason to apprehend Mr. Ebenezer Allan has offered to you for sale lands in Upper Canada, assigned by His Excellency the Lieutenant Governor in Council to him.

If this is the case, as no Grant has issued to Mr. Allan, such a negotiation is illegal, and moreover all advertisements for the sale of lands for which grants have not been issued in this Province are in defiance of the Government, as no persons can become subjects of His Britannic Majesty in Upper Canada but those who are admitted under the authority of the Governor in Council.

I am, Gentlemen,

Your most obedient servant,

D. W. SMITH,

*Acting Surveyor-General, Upper Canada.*

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- C. P. Lucas. *British Colonial Administration and its Agencies*. (Oxford Survey of the British Empire, volume 6, chapter 1). A useful account of the policy of the Home Government in relation to colonial governing bodies. Oxford, 1914.
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(f) *Reports, Official Records, etc.*

- Lord Durham's Report*. (C. P. Lucas. Three volumes. Oxford, 1912). The evidence as to the land system is specially valuable.
- Report of 1840*. By a Committee of the Legislative Assembly. Appendix to the Journals, also published in separate form. Of great value to the student of land problems.



*Seventh Report on Grievances.* By a Committee of the Legislative Assembly, W. L. Mackenzie, Chairman. 1835. Published in separate form. A valuable criticism of the administration: Deals at length with the land system.

*Report on the Clergy Reserves.* By a Committee of the Legislative Council. 1835. In separate form. Valuable in this field.

*Indian Treaties and Surrenders.* The official record.

*Journals of the Legislative Assembly of Upper Canada.* The appendices contain valuable information on land matters.

*Statutes of Upper Canada.* 1791-1840.

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Ditto, 1791-1819. 1914. These volumes are invaluable for any preliminary survey of the period.

*Proclamations of Governors and Lieutenant Governors of Quebec and Upper Canada.* Report of Ontario Bureau of Archives, 1906. Incomplete, but useful in following changes in the land system.

*Imperial Blue Books* on affairs relating to Canada. The period 1803-1840 is covered in 15 volumes. The 1820-29 volume contains the regulations for the sales system, the address by the Assembly in 1826 against further appropriations of land for clergy reserves, the arrangements between Bathurst and the proposed Canada Company, a report on petitions against monopoly of the reserves by the Church of England, and reports on emigration and colonization. The 1830-33 volume contains a statement of regulations (1830) for land grants in both Canada and New South Wales, also the report of J. Richards, who headed a commission of enquiry into the "State of the North American Provinces" in 1830. The 1837 volume contains copies of the general land regulations from 1789 to 1833. The 1839 volume contains Lord Durham's Report, also the minutes of the 1838 enquiry into Crown lands and emigration. The 1840 volume contains several useful statistical tables as to sale of Crown lands and clergy reserves, grants to privileged persons, etc.

(g) *Pamphlets*, in the Ontario Archives at Toronto; the Dominion Archives at Ottawa, and the Toronto Public Reference Library. Useful only as a means of clarifying the political background, or for special topics such as the clergy reserves. Examples are:

Gourlay. *The Banished Briton.* Nos. 1 to 16, and 39. Boston, 1843.

Jackson. *A view of the Political Situation of the Province.* 1809.

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Lindsey. *The Clergy Reserves.* 1851.

Lamond. *Narrative of . . . . Emigration from . . . .*

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M. Doyle. *Hints on Emigration to Upper Canada*. London, 1831.  
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*Newspapers*. Useful in connection with the political events of the time; special mention may be made of the volume of the *Kingston Gazette* (1818), and numbers of the *New York Albion*, 1836-1841, in the Dominion Archives.

## II.—PRIMARY SOURCES.

Because of the lack of any formal studies in this field it was necessary to depend wholly on source material. Almost all of the works listed in the preceding sections, with the exception of the reports and official records, are of general use only, and have been selected from numerous similar works.

- (a) *Minutes of the Executive Council of Upper Canada*. Divided into Land and State volumes, 33 in all. The most important source for a chronological record of the land regulations and their administration. Where there was any uncertainty, the original rough drafts were consulted. Both sets are in the Dominion Archives. The later Land volumes are filled largely with the routine business of the Council as a Land Board.
- (b) *Series Q* of the Dominion Archives manuscripts. This is a series of transcripts of Colonial Office correspondence. It supplements the Minutes of Council by giving both Imperial and Provincial viewpoints. Extremely important in any study of the land system. Volumes 278 to 431 inclusive, of the "A" volumes (letters from the Colonial Office), with a few earlier volumes relating to Lower Canada prior to 1791—altogether some 325 folios. The volumes covering 1812-14 and 1837-38 are less valuable for land matters. Those covering the early years and the 1825-27 period are specially interesting.
- (c) *Minutes of the Canada Land Company* are included in the Q series, volumes 359 to 373, inclusive.
- (d) *The David William Smith Papers*. Volumes A6 to A11, B4 to B15—18 volumes. Original letters, reports, etc., of Surveyor-General Smith. Quite important. Toronto Public Reference Library. Copies in the Ontario Archives.
- (e) *Departmental Records* of the Ontario Government. These are divided among the Patents, Surveys, Sales and Free Grants Offices of the Department of Lands, Forests and Mines, the Office of the Provincial Registrar, and the Ontario Archives. All are in the Parliament Buildings at Toronto; many are in the vaults of the offices named. They are extremely valuable as practical illustrations of the business methods employed in the actual administration of the land regulations. The principal collections examined are:  
Letterbooks of the Surveyor-General. Volumes 1 to 31.

"In" letters of the Surveyor-General. Volumes 1 to 18. These papers form the whole of which the David William Smith papers are a part.

Letters to the Surveyor-General's Office from surveyors. Numerous volumes, arranged alphabetically by names of surveyors.

Office transcripts of surveyors' field notes. Twenty-one volumes.

Orders in Council, entry books. Volumes 5, 6, 7 and 10 to 21. Volumes 8 and 9 are missing. The majority of these orders relate to individual land grants.

Instruction Books, to surveyors from the Surveyor-General. Volume 7.

The Domesday Books. Thirty-four volumes, arranged by townships, giving the details of all grants. Issue books furnish the dates of patents. For a detailed study of settlement these volumes are invaluable.

Descriptions of Clergy Reserves Sales. 1830-1840. Eight volumes.

Books of the Auditor-General of Land Patents. Arranged by districts.

The Registry Books, in which all patents were copied. The early volumes are specially interesting.

Report Books of the Commissioner of Crown Lands. Volumes 1 and 2.

Miscellaneous volumes, too numerous to classify, relating to special land transactions.

- (f) *The Berczy Papers*. Ontario Archives; Dominion Archives manuscripts, Series M, volume 137, and in other series. Deal with the Berczy settlement. Many are in German.
- (g) *The Puisaye Papers*. Ontario and Dominion Archives manuscripts. Numerous letters, reports, etc., many in French. Relate to the Puisaye settlement.
- (h) *Series G*, Dominion Archives manuscripts. Volumes 53 to 107, and 392 to 423. Also odd volumes relating to Lower Canada in matters of mutual interest. Official letters, many of which are copied in the Q series. About 85 volumes. Valuable.
- (i) *Series C*, Dominion Archives manuscripts. Miscellaneous volumes. These papers relate to military matters, and would be useful in any detailed study of the Rideau and other military settlements.
- (j) *The Hunter Papers*, form a part of the C series. Two volumes. Volume 1 gives military correspondence 1799 to 1805; volume 2 gives letters to heads of departments for the same period. Both are transcripts.
- (k) *Upper Canada Sundries*, Dominion Archives manuscripts. Various folios. A collection of miscellaneous papers.
- (l) *Henry Adams Transcripts* of British colonial correspondence, volume entitled "Canada, 1789-1798." Gives the international situation (Britain, United States, Canada) in Simcoe's time. Washington Archives.

- (m) *The Simcoe Papers.* (John Ross Robertson collection). Thirteen books. Transcripts. The originals are in the possession of Mrs. Simcoe of Wolford, the Simcoe estate near Honiton in Devon. Duplicates are in the Library of Parliament, Ottawa. Useful in studying Simcoe's policy.
- (n) *The Wolford Simcoe Papers.* (John Ross Robertson collection). Eleven books. Less useful.
- (o) *Papers of the Indian Department.* Numerous, and valuable for a detailed study of the British Indian policy.
- (p) *The William Jarvis Papers.* Contain Indian Department Orders in Council, 1819-1838. Toronto Public Reference Library.



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